

United States  
Circuit Court of Appeals<sup>9</sup>

For the Ninth Circuit.

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Transcript of Record.

(IN THREE VOLUMES.)

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ALASKA JUNEAU GOLD MINING COM-  
PANY, a Corporation,

Plaintiff in Error,

vs.

ISADORE GOLDSTEIN,

Defendant in Error.

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VOLUME I.

(Pages 1 to 334, Inclusive.)

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Upon Writ of Error to the United States District Court of the  
District of Alaska, Division No. 1.

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**FILED**  
FEB 20 1922  
**F. D. MONCKTON,**  
CLERK



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Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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**Names and Addresses of Attorneys of Record.**

HELLENTHAL & HELLENTHAL, Juneau,  
Alaska,

Attorneys for Plaintiff in Error.

RODEN & DAWES, Juneau, Alaska,  
Attorneys for Defendant in Error.

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In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Complaint.**

L

Plaintiff herein complains of defendant and for  
his cause of action alleges:

**I.**

That during all the time herein mentioned defendant was, and now is, a corporation organized, existing and doing business as such.

**II.**

That continuously, and for a great many years last past, to wit, for a period of some thirty or forty years, the premises known and designated as Blocks "M" and "N" of the Townsite of Juneau, Alaska, said premises being situated on the upper or northerly side of Franklin Street, or lower

Front Street, so called, in the City of Juneau, Division Number One, Territory of Alaska, together with the adjoining and surrounding premises, have been used and occupied for business houses, rooming-houses, boarding-houses, residences, and for other general city purposes, and were so used and occupied on the 2d day of January, 1920. That on the said 2d day of January, 1920, this plaintiff was, and continuously for a great many years prior thereto had been, the owner of Lots 1, 2 and 4, in Block "M," aforementioned, said premises being situated between Franklin Street and Gastineau Avenue, in [1\*] the City of Juneau, Alaska. That on the said 2d day of January, 1920, and for several years prior thereto, this plaintiff owned and maintained on the said premises a general store or mercantile building located on said Lot 1, and general store and mercantile building on Lot 2 aforesaid, an apartment house, and three rows of cabins consisting of eleven apartments, all of which premises were, during all of the said time, in the possession of this plaintiff and were used and occupied for the purposes designated.

### III.

That the said premises are, and during all of the time aforesaid were, situated on the westerly slope of a steep and high mountain generally known and designated as Mount Roberts, and at or near the foot of said slope. That the grade of said slope upon which said premises are situated, and

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\*Page-number appearing at foot of page of original certified Transcript of Record.



from the lower side of said premises to the flume of the said defendant company hereinafter described, is approximately thirty ( $30^{\circ}$ ) degrees from the horizontal. That the said slope, during all of the time herein mentioned, was covered with a heavy layer of soil consisting principally of gravel, rocks, silt, clay and decayed vegetable matter. That said soil was so composed and so situated on said slope that in case it became heavily saturated with water, or in case water, in addition to the natural rainfall, would be deposited upon the surface thereof, it would slide downhill and thus and thereby destroy the aforementioned buildings, homes, warehouse, apartment house, cabins and other improvements situated on said Lots 1, 2 and 4 of Block "M," as well as surrounding lots and properties, and thus and thereby destroy the aforesaid premises, improvements and buildings owned and in the possession of this plaintiff, and destroy all the property in such buildings and houses, and kill or seriously injure occupants thereof, all of which facts as above set out, were at all times well known to defendant, its officers and agents.

[2]

#### IV.

That on and prior to the 2d day of January, 1920, the defendant company for its own benefit and for its own purpose, diverted a large quantity of the water from Gold Creek from its natural channel in Gold Creek Basin and conveyed the same to the westerly slope of Mount Roberts and did so by conducting said water by means of a

flume or conduit through a tunnel through Mount Roberts and to a point on the said slope directly above the aforementioned houses, homes, residences and other improvements above described, and at an elevation of approximately 410 feet above the waters of Gastineau Channel and at an elevation of some 380 feet above the aforementioned premises belonging to this plaintiff, which flume and conduit aforementioned had, prior to said 2d day of January, 1920, been constructed by the defendant company for the purpose of so diverting said water as aforesaid for defendant's own benefit and purpose, as aforesaid, and that the said use and diversion of said water by defendant commenced on or about the year 1914, and continued from the time of the construction of said flume until and after the said 2d day of January, 1920, and the said tunnel, flume and conduit, and all the means for the diversion and utilization of said water were constructed and installed by defendant, and during all of the time herein mentioned and since the beginning of said diversion, said flume, tunnel, conduit, and all other means used in the diversion, conveyance, storing and utilization of said water, were operated and maintained exclusively by, and were continuously in the exclusive possession, care, control and use of defendant, its agents and servants, until after the injury herein complained of.

#### V.

That defendant's flume or conduit described above, terminated at the penstock located on the slope above described and at an elevation of about



380 feet above the aforementioned premises and [3] improvements belonging to plaintiff, and that from the bottom of said penstock extended a pipe used and designated to convey and distribute the water to the places wanted by defendant for use, and which pipe will hereafter be referred to as the distribution pipe.

## VI.

That the water so diverted by defendant as above set out, on the 2d day of January, 1920, while plaintiff was such occupant and owner of said premises and improvements aforementioned, and in possession thereof escaped and flowed from said flume or conduit and was, by the negligence of the defendant, caused or permitted to be or become deposited upon, and to flow over on to the said slope aforesaid, and over and upon said premises so used and occupied as aforesaid, and through and by the negligence of defendant such water so diverted from Gold Creek then and there flowed upon the said slope below said flume and saturated the soil upon said slope both above and underneath the said buildings and improvements, and above, through and over the said premises belonging to plaintiff, and thereby, and in that manner, and owing to the negligence of defendant aforesaid, caused the said soil on the said slope to slide down and upon the said buildings above described and belonging to plaintiff, and thus and thereby destroyed the said premises, houses, buildings, furniture, stock and equipment therein situated, as hereinafter more particularly described.

## VII.

That the said waters so diverted by defendant as above stated, and which caused the injury herein complained of, was permitted, by the negligence of the defendant, to escape from the said flume and penstock and to be deposited upon the said slope as aforesaid, for the reason that there was more water conveyed through said flume to the said penstock than was carried away from the penstock by the distribution pipe, or otherwise. That the defendant negligently permitted more water to flow into said flume and to be conveyed by said flume to said penstock, than was taken away by the distribution pipe. That by constructing [4] and maintaining a flume or conduit to confine and carry away to some safe place any water which at any time, for any reason, might be conveyed to the penstock in excess of what the distribution pipe would, could or did carry away, no water carried to the penstock could or would have overflowed or been deposited upon the slope or premises here in question, or otherwise occasion damage. That ordinary and reasonable care and caution on the part of defendant, required of defendant that it should have constructed and maintained at all times such waste flume to carry away such waste water, or surplus water, and defendant was negligent in failing to provide such precaution against injury from surplus or overflowing water at or near the penstock. That defendant was negligent in this: That it failed to provide and maintain a series of spillways along its said flume by

which spillways surplus water could and would be released from the flume before it reached the penstock. That the overflow water here in question, and which caused the damage herein complained of, was known to defendant to be so flowing and likely to cause said damage long prior to the occurrence of the slide complained of; or would, by the exercise of reasonable care on the part of defendant, have been so known by defendant long prior to the said slide and prior to any damage that would have been done by said water, and the defendant was negligent in not shutting off said water and preventing the said overflow before any damage was occasioned thereby, and defendant wrongfully and unlawfully permitted said water to continue to flow upon the said premises until after the slide complained of had been caused, and the said damage had been done.

#### VIII.

That at the time the defendant company originally diverted the said waters from Gold Creek and conveyed the same to the westerly slope of Mount Roberts, as aforesaid, the premises below the said flume and below the point to which the said waters were so conveyed by defendant, had been for many years prior to said diversion, occupied [5] and used for general and urban purposes, as aforesaid, and prior to the said diversion of said waters by defendant, the owners and occupants of said premises were in no danger whatsoever of having their property destroyed, or any other damage done by any waters from Gold Creek, or from any other nat-

ural flow of water. That by so diverting said water of Gold Creek and conveying the same to the westerly slope of Mount Roberts and to a place approximately 410 feet above the waters of Gastineau Channel, defendant company exposed all of said premises below said flume and so occupied for urban purposes, to grave danger of being destroyed or damaged by the escape of any portion of the waters so conveyed, and exposed the residents and occupants of said property or premises to grave danger of being killed by the escape of any water so diverted by defendant as aforesaid; and by so diverting said water as aforesaid to the westerly slope of Mount Roberts, as aforesaid, the defendant company assumed any and all responsibility for any damage caused by the said water in the event the same should escape and flow upon the said slope as aforesaid.

### IX.

That in and by the slide which took place on the westerly slope of Mount Roberts on the 2d day of January, 1920, by the negligence, and wrongful acts of defendant, as above described, plaintiff's warehouse, apartment house and three rows of cabins aforementioned, were utterly destroyed, together with all the fixtures and furniture therein contained. That plaintiff's general store and mercantile building situated upon the aforementioned Lot 1 was broken and shifted on its foundation and the rear end thereof stove in and the whole thereof flooded with water, mud and debris; that all of his merchandise, stock and other property stored in the

said warehouse and belonging to plaintiff, were destroyed and a large portion of his mercantile stock in the said store was destroyed; that the rear end of plaintiff's said store building located on Lot 2 was broken in and the said building greatly damaged. That the said store building on Lot 1 was damaged in the sum of Fifteen Hundred [6] (\$1500.00) Dollars. That plaintiff's stock of merchandise in his said store and warehouse was damaged in the amount of Twenty-five Hundred (\$2500.00) Dollars. That the said warehouse was of the value of Fifteen Hundred (\$1500.00) Dollars and was utterly destroyed to the plaintiff's damage in the sum of Fifteen Hundred (\$1500.00) Dollars. That the said apartment house of plaintiff's was of the value of Eight Thousand Five Hundred (\$8,500.00) Dollars and was utterly destroyed to the plaintiff's damage in the sum of \$8500.00 That the furniture and equipment of said apartment house belonging to plaintiff was of the value of Two Thousand (\$2000.00) Dollars and was absolutely destroyed to plaintiff's damage in the sum of \$2000.00. That the aforementioned three rows of cabins containing eleven apartments were of the value of Three Thousand (\$3000.00) Dollars and wholly destroyed to plaintiff's damage in the sum of \$3000.00 That the aforementioned store building on Lot 2 was damaged in the sum of One Thousand (\$1000.00) Dollars and that the aforementioned premises on which said destroyed buildings were situated at the time, and prior to the said



slide, were damaged in the sum of Fifteen Hundred (\$1500.00) Dollars.

WHEREFORE plaintiff demands judgment against the defendant in the sum of TWENTY-ONE THOUSAND FIVE HUNDRED DOLLARS (\$21,500.00), together with his costs and disbursements herein.

JOHN RUSTGARD,  
Attorney for Plaintiff. [7]

United States of America,  
Territory of Alaska,  
Division Number One,—ss.

Isadore Goldstein, being duly sworn on oath, deposes and says:

That he is the plaintiff in the above-entitled action; that he has read the foregoing complaint, knows the contents thereof and the same is true as he verily believes.

ISADORE GOLDSTEIN.

Subscribed and sworn to before me this 17th day of August, 1920.

[Notarial Seal]      JOHN RUSTGARD,  
Notary Public for the Territory of Alaska, Re-  
siding at Juneau.

My commission expires Oct. 8th, 1922.

Filed in the District Court, District of Alaska,  
First Division. Aug. 18, 1920. J. W. Bell, Clerk.  
By V. F. Pugh, Deputy. [8]

In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

No. 1990-A.

ISSADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Bill of Particulars.**

Comes now plaintiff and in compliance with the order of the Court submits the following as his bill of the particulars, items of personal property referred to in his complaint and for which he claims damages, to wit:

General Merchandise in store consisting of	
groceries, boots, shoes, and clothing..	\$1500.00
Groceries in warehouse consisting of rice,	
bacon, hams, flour, beans, etc.....	1000.00
Furniture and fixtures in apartment house:	
4 Stoves at \$25.00 .....	100.00
4 Kitchen ranges at \$100.00 .....	400.00
10 Rugs at \$25.00 .....	250.00
4 Beds with springs and mattresses at	
\$40.00 .....	160.00
4 Tables at \$25.00 .....	100.00
4 Dressers at \$30.00 .....	120.00
20 Chairs at \$5.00 .....	100.00
8 Sets light fixtures at \$10.00 .....	80.00

Kitchen Utensils consisting of pots,	
pans and dishes .....	230.00
4 Sets linoleum at \$25.00 .....	100.00
4 Bathtubs at \$35.00 .....	140.00
4 Sinks at \$15.00 .....	60.00
4 Wash-bowls at \$15.00 .....	60.00
4 Toilets at \$25.00 .....	100.00

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Total ..... \$4500.00

A more itemized or detailed statement cannot be furnished by plaintiff.

JOHN RUSTGARD,  
Attorney for Plaintiff. [9]

United States of America,  
Territory of Alaska,—ss.

Issadore Goldstein, being first duly sworn, deposes and says, that he is the plaintiff above named; that the foregoing bill of particulars is true and correct to the best of his knowledge.

I. GOLDSTEIN.

Subscribed and sworn to before me this 26th day of Nov., 1920.

[Notarial Seal]

JOHN RUSTGARD,  
Notary Public.

My commission expires Oct. 8th, 1922.

Copy received this 26th day of Nov., 1920.

HELLENTHAL & HELLENTHAL,  
Atty. for Deft.

Filed in the District Court, District of Alaska,  
First Division. Nov. 27, 1920. J. W. Bell, Clerk.  
By L. E. Spray, Deputy. [10]



In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

Case No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,  
a Corporation,

Defendant.

**Answer.**

Comes now the defendant and for answer to the complaint of the plaintiff herein admits, denies and alleges as follows:

**I.**

Referring to allegations on paragraph 1 the defendant admits that at all times in the complaint mentioned it was and still is a corporation organized, existing and doing business as such.

**II.**

Referring to paragraph II of the complaint, the defendant admits that the plaintiff occupied the premises referred to in the complaint as having been occupied by him and his predecessors for many years, and that they are situate in the town of Juneau at the place indicated in the complaint, but denies that the adjoining premises have been used for the purposes indicated, or for any other purpose whatsoever, during the period indicated,

but, on the contrary, avers that the same were not so used until within the past four or five years. The defendant admits that at the time mentioned in said paragraph the plaintiff entered and occupied the premises in said paragraph referred to as entered and occupied by the plaintiff on January 2, 1920.

### III.

Referring to the allegations of paragraph III of the complaint, the defendant admits that the premises referred to were and are situate on the westerly slope of a steep and high mountain, known as Mount Roberts at or near the foot of said slope and that the grade of said slope from said premises to the flume line of the defendant company [11] is approximately  $30^{\circ}$  from the horizontal. The defendant denies that the entire slope of said Mount Roberts was covered with a heavy layer of soil, but avers that the slope of said mountain was covered, except at points where gulches and ravines occurred with a layer of soil composed largely of clay and rock. The defendant denies that the soil on said slope was so composed or so situated that, if it became heavily saturated, or if water in addition to the natural rainfall were added thereto or deposited upon the surface thereof, it would slide downhill either so as to destroy the buildings, houses, warehouse and other structures referred to, or at all. The defendant denies that the saturation of the soil mass on the slope of Mount Roberts, whether caused by rainfall or otherwise, would cause a landslide whereby the

improvements, buildings, or other property referred to in the complaint, would be injured, or whereby occupants of buildings would be killed or seriously or otherwise injured, and denies that the saturation of said soil mass however brought about would cause any slide whatsoever, and the defendant denies that either it or its agents or officers had, at the time mentioned in said paragraph, or at any other time or times, any knowledge of the matters and things referred to in said paragraph, or any knowledge that would lead it to believe that said soil mass, or any part thereof, so situated on the slope of Mount Roberts would slide if it became heavily or otherwise, saturated with water. On the contrary, this defendant avers that said soil mass had assumed a position of rest on said mountain side at the natural angle of repose, and that the same would remain at rest unless disturbed by the making of excavations, or by some other similar cause, whether brought about by natural or artificial means.

#### IV.

Referring to the allegations of paragraph IV, the defendant admits that on the second day of January, 1920, it was for its own benefit and for its own purpose diverting a quantity of water, which the defendant, however, denies was large, but was only sufficient to serve its purpose. The defendant admits that the water diverted by it was taken from Gold [12] Creek and conveyed by means of a flume line and ditch line along the slope of Mount Roberts and through tunnels to its

mill on the shore of Gastineau Channel, and that said flume line along its course passed above the premises referred to as the plaintiff's premises, and further that the waters flowing in said flume and ditch line were at the time mentioned used by the defendant and under its possession and control, except as hereinafter more specifically set forth in detail, and in this connection the defendant avers that the manner of the diversion of the waters referred to, as well as their application to use, is more specifically set forth elsewhere in this answer.

#### V.

Referring to paragraph V of the plaintiff's complaint, the defendant admits that its flume terminated at the penstock located on the slope of Mount Roberts at an elevation of about 380 feet above the premises referred to in said paragraph as the premises belonging to the plaintiff, but denies that a single pipe extended from the bottom of said penstock to the place or places of use and avers on the contrary that three pipes extended from said penstock to three distinct places of use and the said pipes were installed and used in connection with the conveyance of water and the distribution thereof to the various places of use, and in this connection the defendant avers that said pipes, as well as the ownership thereof, the use for which the same were designed and the purpose served by them is more specifically and in detail referred to elsewhere in this answer.

## VI.

Referring to the allegations of paragraph VI of the plaintiff's complaint, the defendant denies that the water diverted by the defendant as set forth in the complaint, or any other water or waters under the control of the defendant, did on the second day of January, 1920, or at any other time, while the plaintiff was the occupant and owner of the premises referred to or at all, escape from or flow from the defendant's flume or conduit, or from any other device or devices in the possession or [13] control of the defendant and defendant denies that such water was, because of the negligence of the defendant, or at all, caused or permitted to become deposited upon or to flow over or on the slope of Mount Roberts, or over or upon the premises referred to or upon any other place or places whatsoever. The defendant denies that through, or by negligence of the defendant or otherwise, the waters so diverted from Gold Creek, or any other water or waters then and there or at all, flowed upon the slope below the defendant's flume or elsewhere, and defendant denies that water so flowing saturated the soil upon the slope of Mount Roberts, either above or underneath the buildings and improvements referred to, or at all. The defendant denies that water so flowing flowed through, over or upon the premises belonging to the plaintiff, or elsewhere, and defendant denies that in the manner alleged in said paragraph, or in any other manner due to the negligence of the defendant, or to any other cause, water so flowing from said flume or



diverting works of the defendant, or from any other device or devices under the control of the defendant, flowed upon soil on the slope of said Mount Roberts, and that because of this, or for any other reason connected with any act or acts of the defendant, the soil on said slope slid down upon the buildings referred to as those belonging to the plaintiff, or at all, and the defendant further denies that any premises, houses, buildings, furniture, stock or equipment situated as indicated in said paragraph, or elsewhere or at all, were destroyed by any slide or slides, or any other cause or causes whatsoever or set in motion by any act or acts of the defendant, whether negligent or otherwise, and denies that any act or acts of the defendant were the causes, either directly or indirectly of the destruction or injury of any of the premises, houses, buildings, furniture, stock or equipment referred to in said paragraph.

## VII.

Referring to the allegations of paragraph VII of the complaint, the defendant denies that any water or waters diverted by it as stated in the complaint or otherwise were the cause of the injury referred to in [14] the complaint, and defendant further denies that any such water or waters were permitted by the negligence of the defendant or otherwise to escape from its flume or penstock and denies that any such waters were deposited upon the slope of Mount Roberts in said paragraph referred to or elsewhere; denies that such waters escaped or were deposited on said slope

as stated in said paragraph by reason of the fact that more water was conveyed through the flume to the penstock than was carried away by the penstock by the distribution pipe or otherwise. In this connection the defendant avers that no water whatsoever escaped from or flowed from said penstock, flume or other device under the control of the defendant until after the landslide therein referred to had already occurred as hereinafter more specifically set forth. The defendant denies that it negligently permitted more water to flow into its said flume to be conveyed by its said flume to its said penstock or otherwise than was taken away by the distributing pipe or pipes. The defendant denies that the construction or maintenance of a flume or conduit to confine and carry away to some safe place any water, which at any time for any reason might be conveyed to the penstock in excess of what the distributing pipe could or did carry away, could serve any purpose whatsoever in preventing water carried to the penstock from overflowing or being deposited upon the slope or premises referred to, or otherwise occasioning damage. In this connection the defendant avers that its distribution pipes had a greater capacity at all times than its flume so that no water could overflow from its said penstock, as is more specifically stated elsewhere in this answer. Defendant denies that ordinary or reasonable care and caution, or any degree of care and caution, on the part of the defendant whatsoever, required of the defendant that it should have constructed and maintained at all times or at any

time whatsoever such waste flume to carry away such waste water or surplus water, or any flume of any character designed for the purpose indicated in said paragraph, and defendant denies that it was negligent in failing to provide such precaution against [15] injury from surplus or overflowing water at or near its said penstock, or that it was negligent in failing to provide any such flume, or take any such precaution at any other point. On the contrary, the defendant avers that it exercised the highest degree of care in the selection, installation and maintenance of all the devices employed in connection with the matters referred to and denies that it was negligent in any particular whatsoever. The defendant denies that it was negligent in failing to provide or maintain a series or spillways along its said flume by which surplus water could or would be released from its said flume before it reached its said penstock. In this connection defendant avers that it installed, and at all times therein mentioned maintained, spillways wherever they could serve any useful purpose, and that it exercised the highest degree of care in this regard. The defendant denies that it ever had any knowledge of water overflowing, as mentioned in said complaint or at all, and avers that no such water did overflow. Defendant denies that it knew of water which was overflowing from its flume, penstock or otherwise prior to the occurrence of the slide complained of, and denies that it had any knowledge that water so flowing would be likely to cause damage, either prior to the slide or any other



time. Defendant denies that by the exercise of reasonable care or any other degree of care whatsoever, the defendant could or would have known that water so flowing as stated in said paragraph did so flow, and reiterates its denial that any water was so flowing from said flume or penstock or at all prior to the occurrence of the slide referred to. Defendant denies that it was negligent in not shutting off its water and preventing an overflow thereof before damage was occasioned thereby or at all, and it denies that it wrongfully or unlawfully permitted the water referred to or any other water to continue to flow upon said premises until after the slide complained of had been caused, or at any other time or at all, and denies that any water did so flow until after the slide had taken place and the damage referred to had been done. [16]

#### VIII.

Referring to the allegations of paragraph VIII, the defendant denies that all the premises referred to in said paragraph were prior to the diversion and appropriation of the waters of Gold Creek as in this answer stated, occupied for the purposes mentioned in said complaint, or at all, but, on the contrary, avers that at the time the water was so diverted and appropriated there were very few structures on the slope of Mount Roberts, or any where in that vicinity, and that the structures thereafter placed in that vicinity were placed there because the ground was made valuable by the activities of the defendant. The defendant admits, however that at the time it diverted and appropriated

the water, the plaintiff and his predecessors had entered and occupied a store building on Front Street, and some small cabins had been built in that vicinity, but the slope of the mountain, generally speaking, was unoccupied. Defendant denies that in diverting the waters and conveying the same to its mill site as stated, or otherwise, it exposed the premises below its flume line, whether occupied for urban purposes or otherwise, or whether occupied at all, to any danger of being either destroyed or damaged by the escape of any portion of the waters so conveyed, and denies that it exposed the residents or occupants of said property or premises, or any other person or persons whatsoever, to any danger of being killed or otherwise injured, by the escape of any water or waters so diverted by the defendant, or at all, and the defendant denies that by so diverting and appropriating the waters of Gold Creek the defendant assumed any and all responsibility, or any responsibility whatsoever, for any damage caused by said water in the event that the same should escape or flow upon the slope of Mount Roberts.

In this connection the defendant avers that by reason and because of its activities all property in the town of Juneau, and especially the property on the slope of Mount Roberts, and elsewhere in the vicinity of the defendant's plant, was greatly enhanced in value in that the defendant offered employment and opportunity for a large number of people [17] and added generally to the prosperity of the community, and that in all its said

activities it exercised the highest degree of care and that by reason of the exercise of such high degree of care it did not assume any responsibility for damage done by escaping water to any property so made valuable by it, or any other property whatsoever, should such water escape by an accident or other cause, which might happen notwithstanding its high degree of care and vigilance.

### IX.

Referring to the allegations of paragraph IX, the defendant denies that by reason of any slide which took place on the westerly slope of Mount Roberts on the 2d day of January, 1920, or elsewhere at any other time, because of the negligence or unlawful act of the defendant, either as indicated in the complaint or at all, the plaintiff's warehouse, apartment house, three rows of cabins, referred to, were utterly destroyed or destroyed at all, or any part or parcel of the items of the property mentioned; denies that the fixtures or furniture contained in said structures were, because of any slide which was occasioned by the negligence or other unlawful act of the defendant, injured or destroyed. In this connection the defendant avers that while a slide occurred at the time and place mentioned, such slide was not due to any act or acts of the defendant, either directly or indirectly, and was not occasioned in the manner indicated in said complaint, or otherwise, except as hereinafter specifically set forth. The defendant denies that the plaintiff's general store and mercantile building situate upon lot one, as referred to in the com-

plaint, was broken and shifted on its foundation and that the rear end thereof stove in or was flooded with water, mud or debris; denies that all of plaintiff's merchandise stock and other property stored in said warehouse, or any part of said merchandise, stock or other property stored in said warehouse, whether belonging to the plaintiff or otherwise, was destroyed; denies that a large portion of plaintiff's mercantile stock was destroyed; denies that the rear end of plaintiff's store building located on Lot Two or elsewhere was broken in and that the said [18] building was damaged to any extent whatsoever. In this connection the defendant avers that if any of the property referred to was damaged or injured, such damage or injury resulted from a landslide caused in the manner hereinafter more specifically set forth, and not caused either directly or indirectly by any act or acts of this defendant, whether negligent or otherwise.

The defendant denies that the store building referred to as situated on Lot One was damaged in the sum of Fifteen Hundred (\$1500.00) Dollars, or any other sum whatsoever. The defendant denies that plaintiff's stock of merchandise in his said store and warehouse or elsewhere was damaged in the sum of Twenty-five Hundred (\$2500.00) Dollars, or any other sum or sums whatsoever. The defendant denies that the said warehouse was of the value of Fifteen Hundred (\$1500.00) Dollars, or of the value of any other sum or sums whatsoever, and denies that the same was utterly

destroyed or destroyed or injured at all to the plaintiff's damage in the sum of Fifteen Hundred (\$1500.00) Dollars, or in any other sum or sums whatsoever. The defendant denies that the apartment house, referred to in said paragraph of said complaint as the apartment house of the plaintiff, was of the value of *Eight Five* Hundred (\$8500.00) Dollars, or of any other value, and denies that the same was utterly destroyed or destroyed at all to the plaintiff's damage in the sum of Eighty-five Hundred Dollars, or in any other sum or sums whatsoever. The defendant denies that the furniture and equipment in said apartment house belonging to the plaintiff, or otherwise, was of the value of Two Thousand (\$2000) Dollars, or any other sum whatsoever, and that the same was absolutely destroyed or destroyed at all, to the plaintiff's damage in the sum of Two Thousand Dollars, or any other sum or sums whatsoever. The defendant denies that the three rows of cabins referred to in said paragraph as containing eleven apartments were of the value of Three Thousand (\$3000) Dollars, or of any other value whatsoever, and defendant denies that said row of cabins were wholly destroyed, or destroyed at all, to the plaintiff's damage in the sum of Three Thousand (\$3000) Dollars, [19] or any other sum or sums whatsoever. The defendant denies that the store building referred to as situated on Lot Two was damaged in the sum of One Thousand (\$1000) Dollars or any other sum whatsoever, and that the



premises referred to in said paragraph on which said alleged destroyed buildings were situated at the time, or prior to the slide, were damaged in the sum of Fifteen Hundred (\$1500) Dollars, or any other sum or sums whatsoever.

In relation to the denial of the valuation placed upon the buildings and articles of property enumerated in said paragraph, the defendant avers that it denies as above stated the valuations placed thereon, and denies that the same has any value whatsoever for the reason that it had no information or belief sufficient to form a belief in relation to the value thereof. And it specifically denies that any damage or injury sustained by the plaintiff on any account whatsoever was due to any act or acts on the part of the defendant whether negligent or otherwise, either directly or indirectly.

And the defendant further answering, AVERS:

I.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of West Virginia, authorized to do and doing business in the Territory of Alaska, at and near Juneau; that the defendant has fully complied with the laws of the Territory of Alaska as to the domestication of foreign corporations, and has paid the annual license tax due the Territory of Alaska, January 1st, 1921.

II.

That it is engaged in the business of operating a mine situate some distance behind the Town of Juneau in the Silver Bow Basin, and generally



known as the Alaska Juneau Mine. That it operates a milling plant, for the reduction of the ores mined at its said mine, on the slope of Mount Roberts along the shore of Gastineau Channel. That in connection with the operation of its said milling plant, it has diverted some of the waters of Gold Creek and has conduits extending along the side of Mount Roberts and through a series of tunnels driven along the course of [20] said flume. That, at a point above the premises referred to in the complaint and described as the premises of the plaintiff, the waters carried by the flume are discharged into a penstock from which the same are distributed by means of distribution pipes to the places of use. One pipe, which belongs to and is maintained by the City of Juneau, leads to the water mains of the City of Juneau so as to make the water available for fire fighting purposes, another pipe leads to the power plant of the defendant where such portion of the waters as carried by said pipe are applied to use in the generation of electric power. The third pipe is of large dimensions and taps said penstock above the other two, and conveys all the water coming to said penstock not flowing through the other two pipes to defendant's milling plant where the same is applied to use. That said appliances are so constructed that said penstock, cannot overflow, and said flume and penstock, distribution pipes, and all other contrivances used in connection therewith, are the best and most approved devices known in connection with modern engineering, and the same

were, each and all, installed and maintained with the highest degree of engineering skill.

That, in order to prevent leaves, moss and other kinds of debris, from entering the distribution pipes, and occasioning interference or inconvenience in connection with the operation of machines fed by such pipes, either directly or indirectly, it was necessary and imperative that a screen should be so installed as to take from the water coming into said penstock, the moss, leaves and other debris, and for that purpose a revolving screen was placed at the opening of said flume in such a manner that the water coming therefrom would flow through said revolving screen and the moss, leaves and other debris would be separated therefrom and carried by said screen through a spout installed for said purpose, to the outside of the penstock above referred to. That the waters of Gold Creek are generally quite clear but do, on occasion, for one reason or another, contain moss, leaves and debris in sufficient quantity that the meshes of a stationary screen might become clogged and that, in order to overcome this difficulty, the revolving [21] screen as aforesaid, was installed, which was at all times kept revolving in such a manner as to keep itself clean from moss, leaves and other forms of debris, and permit the free and unobstructed passage of the water through it. That in order to accomplish this purpose, an electric motor was installed, which was supplied and driven with, and by, current coming from the electrical system maintained by the defendant. That said motor would

continue to keep said screen revolving, and, in that manner, to keep the meshes thereof from becoming clogged so as to allow the water to pass through the same freely, and that all the devices so installed were of the most approved type, and in all respects, sufficient for the purposes for which the same were designed, and were installed and maintained in accordance with the highest degree of care, foresight and engineering skill.

### III.

That on January 2d, 1920, a slide occurred on the slope referred to in the complaint.

### IV.

That the Alaska Gastineau Gold Mining Company maintained a tower on the area that forms part of the general mass that slid down the mountain side on the occasion referred to, and that high tension wires, owned and controlled by the last-mentioned corporation, were fastened to said tower, it forming a part of its general pole line on which wires were stretched to convey electric current. That the wires so designed to carry electric current, and owned and controlled by the said Alaska Gastineau Gold Mining Company, were in close proximity to a line of poles supplied with similar wires designed for like uses, and owned and controlled by the defendant company and others associated with it in that regard, and, at a point immediately to the southeast of where said landslide occurred, the wires of said Gastineau Company crossed the wires of the defendant and its said associates. That when said landslide took

place, the said tower of the said Gastineau Company situated on the slide mass, as above stated, was disturbed with a result that the wires of the said Gastineau Company and those of the defendant and its [22] associates, were brought in close enough contact to cause a short circuit on the defendant's lines, as a result of which the electric motors situate in the defendant's plant, including the motor designed and installed to drive the revolving screen above referred to, were stopped so that said revolving screen came to a standstill as a result of the slide aforesaid.

V.

That a short time prior thereto, another and different landslide occurred on the northerly slope of Mount Roberts in the vicinity of Wood's Gulch, which said landslide came from a point high up on the slope of said mountain, and was such that it could not be anticipated or foreseen, and consisted of a quantity of gravel and soil that slid down the side of the mountain, and in coming in contact with the flume and diverting works of the defendant situate at Wood's Gulch, so damaged the same and interfered with their operation, that a considerable quantity of surface water carrying moss, leaves and other forms of debris coming from the side of Mount Roberts at that point, found its way into the North Portal of what is known as No. 3 tunnel, and thence into the flume of the defendant hereinbefore referred to. That said landslide occurred just immediately prior to the landslide referred to in the complaint, and that steps were

immediately taken by the defendant to overcome the effect thereof, but that some of the debris consisting of leaves, moss and other loose materials lying on the surface of the mountain, had, notwithstanding the highest degree of vigilance exercised by the defendant, found its way into the flume as aforesaid, and that, by reason thereof and because of the unusual rains that had fallen immediately prior to the time of the slide referred to, the water coming from the flume and passing through said revolving screen, was highly charged with leaves, moss and other surface debris so that when the revolving screen came to a stop, as hereinbefore stated, the meshes thereof were quickly filled with debris so as to cause the waters coming from the flume, to, in part, flow over said screen instead of through the same, and find their way through the discharge spout installed and [23] designed for the purpose of enabling the tunnel screen to discharge the moss and debris taken from the water, to the outside of the penstock, as hereinbefore stated. That said water did not come from said spout designed to carry away the debris taken from the water by the screen, until after the screen had stopped and the meshes thereof had become clogged as above stated, all of which was due directly to the movement of the slide mass and the consequent interference with the electrical current supplying the motor *bb* which said revolving screen was driven, which said slide was an act of God over which the defendant had no control, and which the defendant could not, by exercise of



any degree of foresight, have anticipated or foreseen.

That the water so coming from said appliances of the defendant, did not, in any wise, occasion said slide, were not the cause thereof, either in whole or in part, and were not due to any negligence of the defendant, but occasioned as aforesaid, by causes beyond its control, and which were such that it could not foresee their occurrence.

And the defendant further answering, and by way of AFFIRMATIVE DEFENSE, AVERS:

I.

That the deposits of earth on the side of Mount Roberts at, and in the vicinity where the slide herein referred to occurred, were, and had been, for many years, in a state of rest and were so situated that unless disturbed or undermined, the same would remain in the position occupied by them on the mountain-side, in the absence of unusual, natural occurrences.

II.

That on the second day of January, 1920, and for a long time prior thereto, one Peter Koski, and his predecessors in interest, occupied a plot of ground on the slope of Mount Roberts immediately above the premises referred to in the complaint as the premises occupied by the plaintiff; that the said Koski and his said predecessors in interest, as well as his and their agents, servants and employees, made an excavation on the premises occupied by them and cut away a portion of the soil situate [24] on the slope of Mount Roberts at that point



in such a manner as to deprive the soil mass lying above said excavation and cut off its subjacent support so as to enable it to slide down the mountain-side and that the soil mass lying immediately above said cut and excavation so made and maintained was the mass that slid and formed the landslide referred to in the complaint.

That the said Peter Koski and his predecessors before him failed to place any bulkhead or bulkheads or any protection whatsoever in said cut or excavation at the point where the natural slope of the hill had been so changed, or at all, but, on the contrary, negligently made such excavation so as to remove the subjacent support from the mass lying above the same, and negligently failed to construct bulkheads or other structures with a view to supporting the mass from which the subjacent support had been so taken; and that the said Koski at all times in these pleadings mentioned, so negligently maintained said excavation, and so negligently failed to take any steps whatsoever to protect himself from landslides, or to support said mass by means of bulkhead or otherwise, or in any wise to supply any kind of device or devices whatsoever that would prevent said mass from sliding, and negligently failed to take any steps to retard or oppose the action of natural laws in establishing the equilibrium of the soil mass on the mountain-side disturbed by the making of such cut or excavation.

That on the 2d day of January, 1920, said mass having become saturated with water, which said

saturation resulted solely and entirely from natural causes, to wit, unusually heavy rains and melting snows, was absorbed by said mass until it became saturated and heavy, and it, having no support, its subjacent support having been taken away and removed by the said Koski and others connected with him as aforesaid, and no effort having been made to supply support by artificial means, thereupon slid down the mountain-side, the mass so sliding being coextensive with the excavation made as aforesaid. That the making and [25] the maintaining of said excavation, and the removal and consequent absence of the subjacent support that the hillside mass formerly had in its natural state, as well as the negligence of said Koski in failing to construct a bulkhead or other similar devices as aforesaid, were the sole cause of the slide above mentioned and referred to in the complaint.

WHEREFORE, the defendant prays that this plaintiff's complaint be dismissed, and that the plaintiff recover nothing by reason thereof, and that the defendant have judgment against the plaintiff for its costs and disbursements in its behalf incurred.

HELLENTHAL & HELLENTHAL,  
Attorneys for Defendant.

United States of America,  
Territory of Alaska,—ss.

P. R. Bradley, being first duly sworn, on oath deposes and says: That he is the agent and general manager of the defendant corporation; that he has

read the foregoing answer and knows the contents thereof and that the facts therein stated are true as he verily believes.

P. R. BRADLEY.

Subscribed and sworn to before me this 22d day of March, 1921.

SIMON HELLENTHAL,  
Notary Public for Alaska.

My commission expires Dec. 15, 1921.

Service admitted.

HENRY RODEN,  
Of Attorneys for Plaintiff.

Filed in the District Court, District of Alaska,  
First Division. Mar. 22, 1921. J. W. Bell, Clerk.  
By L. A. Green, Deputy. [26]

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In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

No. 1990—A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COM-  
PANY, a Corporation,

Defendant.

**Reply.**

Comes the plaintiff and for reply to the affirmative defense of the defendant denies and alleges as follows, to wit:

## I.

Plaintiff denies that Peter Koski, deceased, and his predecessors in interest, or any other person, or at all, made any excavation in or cut away any portion of the soil situate on the slope of Mount Roberts at a point mentioned and described in paragraph 2 of said affirmative defense, or at any other point or at all; denies that said Peter Koski, deceased, or any other person, did any act or thing whatsoever which deprived any soil mass of its support and denies that the soil mass that slid and formed the slide in said paragraph referred to was situate immediately above the premises in said paragraph described.

Plaintiff denies that unusually heavy rains caused the mass of earth in said paragraph described to become saturated with water and that such saturation resulted from natural causes, but alleges the fact to be that such saturation was caused solely and exclusively by a large volume of water poured upon said mass and discharged from the penstock of defendant, as alleged in plaintiff's complaint; denies that said mass slid down on account of any act done or left undone by the said Peter Koski or his predecessors in interest or by any other person, except that said slide was caused by the negligent act of the defendant in maintaining it flume and penstock as set forth in plaintiff's complaint; denies that the [27] failure of said Koski or the failure of any other person to construct a bulkhead was the sole cause or any cause of the slide referred to and denies that the said

Koski or any other person was negligent in any way or manner whatsoever and alleges that no act, either of commission or omission, on the part of the said Koski or on the part of any other person, in any way, manner or form caused the said slide or contributed to the cause thereof.

Further answering the said affirmative defense plaintiff denies that the slide or damage complained of was caused by any negligent act of the said Koski or of his predecessors or of any other person, or by the combination of all or any of the acts or occurrences mentioned in paragraph 2 of said affirmative defense; denies that any of the acts, conditions and circumstances referred to in said paragraph caused, severally or collectively, or severally or collectively the said slide or damage complained of, and denies that any of the acts, conditions or circumstances referred to in said paragraph 2 contributed in any manner whatsoever severally or collectively, or severally or collectively, to cause said slide or the damage complained of and plaintiff alleges that *that* the said slide and damage by him complained of was caused as set forth in his complained filed herein and in no other manner.

WHEREFORE plaintiff prays judgment as in his complaint.

RODEN & DAWES,  
Plaintiff's Attorneys. [28]

United States of America,  
Territory of Alaska,—ss.

Isadore Goldstein, being first duly sworn on his oath deposes and says: I am the plaintiff in the within entitled action; I have read the foregoing reply, know the contents thereof and that the same is true as I verily believe.

ISADORE GOLDSTEIN.

Subscribed and sworn to before me this 31st day of March, 1921.

[Notarial Seal]

HENRY RODEN,

Notary Public in and for Alaska.

My commission expires July 24, 1922.

Receipt of copy of within reply is hereby admitted this 2d day of April, 1921.

HELLENTHAL & HELLENTHAL,

Defendant's Attorneys.

Filed in the District Court, District of Alaska,  
First Division. April 2, 1921. J. W. Bell, Clerk.  
By V. F. Pugh, Deputy. [29]

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In the District Court for the District of Alaska,  
Division Number One, at Juneau.

Case No. 1990-A.

ISADORE GOLDSTEIN,

Plaintiff,

vs.

ALASKA JUNEAU GOLD MINING COM-  
PANY, a Corporation,

Defendant.



**Bill of Exceptions.**

BE IT REMEMBERED That this cause came on regularly for trial before the above-entitled court on the 22d day of March, 1921; Plaintiff was present in person and by counsel, Henry Roden, Esquire, appearing for the plaintiff. The defendant also was present in person and by counsel. Messrs. Hellenthal and Hellenthal appearing as counsel for the defendant. The cause being at issue upon the questions of fact presented by the pleadings herein. A jury was regularly selected, empaneled and sworn to try the issues, and thereupon the plaintiff, to maintain the issues on his part, called as witnesses the following named persons:

Anderson, John	Goldstein, Isadore
Bach, Mrs. Anna	Gray, J. L.
Benson, W. J.	Guerin, E. C.
Berg, Hans	Hanson, Ole
Bradley, P. R.	Harri, Oscar
Bussey, Edwin E.	Harris, Frank
Connors, J. J.	Helsin, Charles
Crowther, H. P.	Higgins, Georgia
Douglass, Harry	Holst, Martin [30]
Dudley, John W.	Hyle, Ambrose
Forsythe, Al	Jackson, John
Frieman, Sim	Johnson, Jack
Gabie, C. A.	Kirk, Robert
Garster, Wm. M.	Larson, James
Geddes, Clarence	Larson, John
Geddes, Wm.	LeFevre, H. B.

Long, Lewis	Robe, L. S.
Manahan, W. J.	Simonson, Sam
Maynard, Wm. J.	Skuse, C. J.
Michaelson, Chris	Sonberg, Frank
Nelson, N. G.	Sorri, Fred A.
Nelson, Mrs. N. G.	Thompson, Emil
Newman, Fred	Torkleson, Geo. P.
Nichols, C. C.	Watts, Beatrice

—who each for himself, being duly sworn to tell the truth, the whole truth and nothing but the truth, testified in answer to questions as hereinafter appears, and the evidence of plaintiff's witnesses having been thus received, the plaintiff rested his case in chief.

Whereupon the defendant, to maintain the issues on its part, called as witnesses the following named persons:

Bauzman, L.	Dowling, Edward
Bendel, John	Eberhart, Mrs. Virginia
Benson, Amos	Grefe, Raymond F.
Beistline, R. E.	Hargraves, W. B.
Bland, Charles	Hayne, Mrs. George
Bradley, P. R.	Higgins, James E.
Brown, Bruce	Holmquist, Fred
Carlson, Charles	Holmquist, John
Casey, W. W.	Jensen, Gudman
Clauson, Victor C.	Jackson, George T.
Cook, N. B.	Johnson, W. G.
Cropley, Jake	Jorgenson, Geo. R.
Crowell, Ed.	Judson, T. B.
Davidson, Henry G.	Kelly, D. F.

Keeney, R. M.	Oswell, George
Kennedy, Robt.	Reck, John
King, John H.	Richards, John
Loveley, R. P.	Saum, George W.
Marshall, J. B.	Smith, Charles
McNaughton, John	Stewart, B. D.
Metcalf, Frank A.	Summers, M. B.
Metzgar, L. H.	Sutton, M. S.
Murphy, R. E.	Trelons, John
Newman, Wert	Winter, Lloyd V.
Nordling, H. G.	Young, R. R.

—who being each duly sworn to tell the truth, the whole truth and nothing but the truth testified in answer to questions as hereinafter fully appears. Each of the defendant's [31] witnesses so called having testified as is hereinafter narrated, the defendant rested its case.

Whereupon the plaintiff to further maintain the issues on his part and in rebuttal called the following named persons as witnesses:

Layton, Wm.

Summers, M. S.

Robe, L. S.

—who being each sworn to tell the truth, the whole truth and nothing but the truth testified in answer to questions as hereinafter more fully appears.

And thereafter the premises were viewed by the Court and jury, as hereafter especially appears, and thereupon, when the Court was reconvened, the plaintiff, to further maintain the issues on its part, recalled the witness, P. R. Bradley, who testified as hereinafter fully appears.

The evidence given by each and all of the witnesses above named on behalf of both the plaintiff and the defendant, as the same was given and adduced, is as follows: [32]

**Testimony of John W. Dudley, for Plaintiff.**

JOHN W. DUDLEY, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. You may state your full name.

A. John W. Dudley.

Q. Where do you live?      A. Juneau.

Q. How long have you lived in Juneau?

A. About 18 years.

Q. What has been your profession during that time, or most of that time?

A. Civil engineering.

Q. Are you acquainted with what is known as Mount Roberts?      A. Yes.

Q. Where is Mount Roberts located?

A. Southeast of Juneau.

Q. Is it in Juneau precinct?

A. In the immediate vicinity.

Q. Juneau precinct, Territory of Alaska?

A. Yes, sir.

Q. Are you acquainted with the flume and pipe line which leads from a place on Mount Roberts back of the town of Juneau—the flume leading to what is known as the Basin?      A. Yes, sir.

(Testimony of John W. Dudley.)

Q. I wish you would describe generally the course which this flume takes.

A. The course of the flume is practically parallel to that of Gold Creek, from a point a mile and a half to the northeast of Juneau to the east side of a spur of Mount Roberts; there it empties its water into a ditch and flows through a tunnel through Mount Roberts—through the spur of Mount Roberts to [33] a point 400 feet above tide water and immediately south of the Juneau town site.

Q. This flume is used to carry water from Gold Creek to the place you have indicated now?

A. Yes, sir.

Q. Is it a flume all the way from the beginning to the end?     A. No, sir.

Q. What changes are there in this water system?

A. As I have stated, the flume ends at the east side of the spur of Mount Roberts.

Q. How is the water carried through the tunnel there?

A. Through the tunnel it is carried in a ditch, and at the southwest portal—the old portal of the tunnel the flume is resumed.

Q. Can you give us an approximate idea, Mr. Dudley, as to the size of the flume as it emerges on the Juneau side of Mount Roberts and is carried along the mountainside for a distance?

A. The only place I have measured it is at what is known as the penstock—there it measured—the

(Testimony of John W. Dudley.)

outside measurements were 4 feet by 4 feet—that is, roughly.

Q. Roughly speaking? A. Yes.

Q. Where does this flume terminate on this side of the mountain?

A. The flume ran along the side of the mountain toward the southeast to some point above the Alaska Juneau mill—a branch from it left the main flume just outside the portal, ran from the northwest, crossing Portal Gulch—about 150 feet from the junction of the main flume it ran into a penstock.

Q. Describe this penstock, Mr. Dudley, as near as you can.

A. Well, it was a square rectangular tank about 9 and a half by eleven, with a housing over it, and a platform around the upper part of the penstock.

Q. Now, what is that penstock used for, do you know, Mr. Dudley?

A. To convey the waters which flowed through the flume just [34] described into a pipe-line, or two or three pipe-lines.

Q. How are those pipe-lines connected with this penstock?

A. My understanding is that there were three pipes,—two small ones beneath, and a 30-inch pipe, the 30-inch pipe being some distance above the bottom of the penstock.

Q. What is the object of this penstock—the purpose?

A. Well, it had a twofold purpose—one, to com-



(Testimony of John W. Dudley.)

pensate the momentary fluctuations of the water of at least one or two of the pipes; and it also acted as a means of collecting the water and forcing it through the pipe, to be used elsewhere.

Q. Acts more or less as a reservoir?

A. Yes, sir.

Q. And stabilizer?      A. Yes, sir.

Q. Where does this big pipe you have spoken of lead to, do you know, Mr. Dudley?

A. It leads directly downhill to what is known as the administration building, the old concrete foundation on Gastineau Avenue.

Q. From there?

A. From there it turns almost at right angles and follows to the mill properties.

Q. What is it used for—mill purposes?

A. Yes, sir.

Q. Are you acquainted in a general way with the milling operations that are carried on down there?

A. Yes, in a general way.

Q. Do you know who this milling plant belongs to?      A. Yes, sir.

Q. Who?

A. The Alaska Juneau Gold Mining Company.

Q. Do you know who the flume and penstock belong to?

A. They were built by the Alaska Juneau Gold Mining Company. [35]

Q. Do you remember about the time when they were built, Mr. Dudley?

(Testimony of John W. Dudley.)

A. I don't believe I can even state the year, Mr. Roden.

Q. Some five or six years ago?

A. Yes, some five or six years ago.

Q. Where this water is used in the mill, is it of any importance or consequence to have a steady flow of water there?

A. I should say it is of the utmost importance.

Q. And to insure that constancy of flow is one of the purposes of the installation of a penstock?

A. Yes, sir.

Q. Is there anything about the penstock, Mr. Dudley, where water may be discharged from it otherwise than from these pipes?

A. As the penstock was built there was a trough-like spout made of sheet iron, about 8 feet long, from which water and refuse might discharge.

Q. This spout was shaped, was it?

A. Roughly rounded, like a trough—in a trough-like shape.

Q. Where was that connected with the penstock, and how?

A. Near the top—at the top of the penstock proper and projected out from it—sloped at a considerable angle.

Q. Now, have you ever made a map or sketch showing the location of this penstock with reference to the town of Juneau and the mountain-side.

A. Yes, sir.

Q. When did you do that, Mr. Dudley?

A. On May 8th and the days following, 1920.

(Testimony of John W. Dudley.)

Q. That is when you made your actual measurements in the field?     A. Yes, sir.

Q. Did you carry out those measurements and observations on the plat?

A. The plat was drawn from those measurements.

Q. Is this the plat that you prepared, Mr. Dudley?

A. That is a blue-print copy, yes, sir. [36]

Q. Now, I show you this map and I wish you would explain it as well as you can.

A. The map is based on Franklin Street,—the outer end of it, to the shed of the portal of the old tunnel at the other; immediately adjoining that is what was the change room, since removed; the branch flume that I spoke of is shown just at the edge of this portal shed, and crossing through the corner of the change room to the penstock, which is here represented, the pipe-line leading from the penstock to the Alaska Juneau mill goes straight downhill to a point just northeast of the old concrete foundation of the administration building, there turning and following the line of the hill; this represents Gastineau Avenue; this shaded portion represents the area covered by the slide; and the trail leading up from Gastineau Avenue is represented by dotted lines—leads up to a trail coming alongside the mountain to Second Street, and they branch here, or rather come together there, and go along up to the change room.

Q. I understand you to say there is a trail coming from the penstock leading down the hill and this

(Testimony of John W. Dudley.)

trail branches off here, one going up the mountain-side and another trail coming straight down?

A. Yes.

Q. Where did this trail coming straight down the hill lead to?

A. It led down to a point just a little ways above the administration building, there branched again going off to the eastern side, and one coming down the western side of the concrete foundation.

Q. This trail is marked here?

A. Marked trail.

Q. I know, but by what lines?

A. By dotted lines.

Q. I see some of these contour lines—I wish you would explain what these contour lines are—what they mean. [37]

A. These irregular lines are what are called contour lines, and a contour line is a line which follows the level—which follows the undulations of the ground at a certain level above some zero plane. In the case of this map the zero plane was the extreme high-water mark of Gastineau Channel, and each one of these contour lines represents a vertical difference in elevation of five feet, and the heavier lines 25 feet vertically. To illustrate now as to the contour, if that portion in that vicinity of this slide could be cut off level at a point, say, 200 feet above high-water mark of Gastineau Channel and you were to be immediately above that and looked down upon that portion so represented you would see the edge, and that portion would take the

(Testimony of John W. Dudley.)

form of the 200 foot contour line.

Q. Where these lines rise here on this plat what does that indicate on the mountain-side—these high points?

A. Those raises apparently are deep depressions of the ground, and those curving in the opposite direction, down hill, indicate elevations.

Q. So these high places on the map here—these contour lines, as a matter of fact, indicate a depression receding in the mountainside?

A. Yes, sir.

Q. And the lower places practically represent the protruding portions of the mountain-side—the high portions of the mountain-side?

A. Yes, sir.

Q. What does this area here indicate, Mr. Dudley?

A. This area which is shaded indicates the ground covered by the landslide which occurred on January 21, 1920.

Q. Now, I see you have marked in this slide area the locations of transmission lines and a tower here. I wish you would explain these transmission lines a little more fully, near the Koski house there.

A. There are three transmission lines crossing this slide area— [38] one belonging to the Alaska Juneau Company and two to the Alaska Gastineau Gold Mining Company, and they are indicated by these letters on this map.

Q. There is a tower indicated here—how did you



(Testimony of John W. Dudley.)

get your information as to the location of that tower?

A. The Alaska Gastineau Company had a serial number for each tower—each one of those steel towers I found the serial numbers of the towers adjacent to the north and south and knew what that was from their map found the actual distance in feet between the towers adjacent north and south.

Q. Do you remember approximately now about what the distance between the towers is?

A. I couldn't say—in the neighborhood of 350 feet.

Q. You have marked in the location of certain buildings there,—where did you get the information from which you based those sketches you made in there?

A. That information was given me by persons living in houses immediately adjoining.

Q. You were generally familiar with the situation up there? A. Yes, sir.

Q. And know whether those as you have marked them are approximately correct?

A. Yes, sir; I have known that locality for years.

Q. What is the direction of the drainage over this way here, Mr. Dudley,—that is, if there was any water draining from the mountainside how would it come down—how would it drain into Gastineau Channel?

A. In the immediate vicinity of this slide area, there are two natural drainage ways—one indi-



(Testimony of John W. Dudley.)

cated here—the upper left hand corner of the plat—and running downhill through the slide area; the other is one at which the portal of the tunnel emerged from the mountain, and that follows almost the trail—of course slightly curving to the eastward. That Portal Gulch, as it is known, has branched out and [39] below the penstock formed another little gulch in between that and the one on the upper left hand corner.

Q. Now, where you have described the location of the penstock and flume, up around in here, is that condition existing at the present time, or has it been changed?     A. It has been changed.

Q. When was the change made, do you remember—about?

Mr. HELLENTHAL.—Oh, I guess that is immaterial.

Mr. RODEN.—Just so as to get the correctness of the map, is all I am offering it for.

Mr. HELLENTHAL.—We have the map at the time that he made it.

Q. This was the condition on May 7th or 8th, did you say?     A. Yes, sir.

Q. Do you know how long those conditions had existed prior to that time?

A. The surface indications there were that there had been no material change at that time.

Q. Now, when you were up there, Mr. Dudley, did you make any examination of the ground to see whether you could see any indications of the running of water?     A. Yes, sir.

(Testimony of John W. Dudley.)

Q. What did you do in that respect,—what did you find?

A. I found very plain indications of a stream or streams of water which could come from nowhere else except the spout from the penstock, and which I traced down through the brush in the trail and down the trail to and beyond the point of the slide.

Q. What indications did you find there?

A. The indications were, in the trail, the washing away of the fine sand—where a stream runs through a trail large stones and boulders are left and the sand is washed out. Through the brush the leaves, sticks, small stones and debris had been carried by the water and lodged against the grass and brush.

Q. You found this evidence leading below the spout that you have [40] described?

A. Yes.

Q. How is the country there, Mr. Dudley, as far as the drainage is concerned?

A. Right underneath the spout there is a pile of rock and some debris there.

Q. What I am trying to get to is this, where would any water coming from this property in a natural way, where would it drain to?

A. A very few feet of difference in the discharge would cause it to drain one way or the other. In this case the natural drainage under the conditions prevailing at that time is the direction of the flow as I found indicated on the ground.

Q. Now, from your map here, this is a protruding portion of the country, isn't it?

(Testimony of John W. Dudley.)

A. Yes, sir; that is a distinct ridge or hog-back.

Q. Where would this hog-back naturally drain to?

A. Drains to either side—water that flowed from its surface.

Q. What is the elevation of the penstock, Mr. Dudley?

A. At the spout I think 387 feet above high-water mark.

Q. And what is the elevation at a point about the top of the slide there?

A. About 231' or 2 feet.

Q. Now, I notice you have some numbers and figures in here, P-1 and P so and so—what do those indicate, Mr. Dudley?

A. Those indicate the position and direction in which photographs were taken by Mr. Adams, the photographer, on May 10th.

Q. Were you present when those photographs were taken?     A. Yes, sir.

Q. I show you a photograph and ask you what that represents?

A. Represents a general view looking directly up the slide from Gastineau Avenue.

Q. You are acquainted with all these photographs?

Mr. HELLENTHAL.—The same ones we had before? [41]

Mr. RODEN.—Yes. I will offer this in evidence.

The COURT.—Are you going to introduce the plat, Mr. Roden?

(Testimony of John W. Dudley.)

Mr. RODEN.—Yes; I will offer the plat first.

Mr. HELLENTHAL.—No objection.

(Whereupon said plat was received in evidence and marked Plaintiff's Exhibit "A.")

Mr. RODEN.—I will offer this photograph now.

Mr. HELLENTHAL.—All right.

(Whereupon said photograph was received in evidence and marked Plaintiff's Exhibit "B.")

Q. What does photograph No. 2 represent, Mr. Dudley?

A. No. 2 represents the slide area, taken from a point just above the site of the Koski house—just above the Bach house, which now stands on the south side of the slide area.

Q. The Bach house is still standing?

A. Yes, sir.

Q. The Koski house is gone?

A. The Koski house is gone.

Q. Where did the Koski house stand with reference to the Bach house?

A. Immediately north and practically parallel with it.

(Said picture was received in evidence and marked Plaintiff's Exhibit "C.")

Q. What does No. 3 represent?

A. Photograph No. 3 was taken from the south edge of the slide, looking directly up to the point where the first break of the ground occurred.

(Said picture was received in evidence and marked Plaintiff's Exhibit "D.")

Q. Number 4?

(Testimony of John W. Dudley.)

A. Number 4 was taken in the trail right at the head of the slide, showing the first break of ground—the break occurring in the trail itself. The camera was pointed to the westward.

(Said picture was received in evidence and marked Plaintiff's Exhibit "E.")

Q. Number 6?

A. Number 6 was taken a little farther up, looking toward the [42] northward—taken in the trail, showing the course of the water coming down where the trail looped, and the water followed the westernmost loop of the trail. Shows distinctly the water action there,—washing out the sand.

(Said photograph was received in evidence and marked Plaintiff's Exhibit "F.")

Q. Seven?

A. Number 7 was taken a little further above on the trail and looks downward to the street—was taken for the purpose of showing the water action—the washing out of the sand in the trail from in between the stones.

(Said photograph was received in evidence and marked Plaintiff's Exhibit "G.")

Q. Number 8?

A. Number 8 was taken just following the fork of the trail, looking in a northwesterly direction, showing just the emergence of the water from the brush and the action of the water in the trail itself.

(Testimony of John W. Dudley.)

(Said photograph was received in evidence and marked Plaintiff's Exhibit "H.")

Q. Nine?

A. Number 9 was taken at the same point as No. 8, looking in an opposite direction—looking down the trail, or rather down the course that the water took in the brush. Just above point 8 and 9 the water left the trail and cut across, and this shows how it went through the brush and piled up the small stones and debris against the log on the south side of the trail.

(Said photograph was received in evidence and marked Plaintiff's Exhibit "I.")

Q. Number 10?

A. No. 10 was taken at a point on the bank just above the trail, to the westward of the penstock.

Q. What does it show?

A. It shows the northwest corner of the penstock proper, the [43] housing above it, and the iron spout leading down from the penstock—the discharge spout.

(Said picture was received in evidence and marked Plaintiff's Exhibit "J.")

Q. Number 11?

A. Number 11 was taken almost opposite, on the south side of the trail, and shows a little more fully—directly—the spout and the penstock building.

(Said picture was received in evidence and marked Plaintiff's Exhibit "K.")



(Testimony of John W. Dudley.)

Q. Number 12?

A. No. 12 was taken from the trail at the northwest corner of the penstock platform, and shows the end of the spout projecting outward, and shows the pile of stone and debris immediately underneath it.

(Said photograph was received in evidence and marked Plaintiff's Exhibit "L.")

Q. Do you know what the grade or the slope of Mount Roberts is in the neighborhood of the slide area, Mr. Dudley?

A. I prepared a profile of the ground there on a line between the corner of the penstock and the north side of the old Goldstein building, and that indicates the slope of the mountain-side above the slide area to be between 36 and 37 degrees from the horizontal. At the slide area the bedding, or the new angle of the slide is about 28 degrees from horizontal. The angle indicated by the south edge of the slide is between 32 and 33 degrees.

Q. Now, I wish you would explain that profile map a little, Mr. Dudley.

A. The bottom base line is the horizontal plane I spoke of as the zero plane, the plane at extreme high water mark of Gastineau Channel. The heavy black line shows the surface of the ground; the lower one of the slide area indicates the new surface, or bedding, of the slide, the upper line [44] indicates the south edge of the slide. From that point on up—from the upper end of that slide area up the mountain it is the original surface of the

(Testimony of John W. Dudley.)

ground—along this line—this line is indicated by a red line on the blue-print.

Q. Now, what does this here indicate?

A. The horizontal line just to the right of the slide area and above the surface line indicates the position and elevation of Gastineau Avenue at that point.

Q. Can you indicate the position of the tower you have in this slide area here?

A. I haven't marked that on this. This profile map was constructed merely to show the relative angles and slope.

Q. What did you say that angle was?

A. At the slide area the new surface, or bed of the slide, about 28 degrees from horizontal; the the south edge of the slide between 32 and 33 degrees.

Q. Now, what was the capacity of this spout—this discharge spout, that you have spoken of with reference to the flume—the proportionate capacity, I mean? Can you estimate it?

A. Only in a general way.

Q. All right.

A. If all the water flowing into the penstock from the flume were to emerge at the spout, the spout would not carry it all.

Q. Now, you have been familiar with the topography and condition of this side of Mount Roberts, the place where this slide occurred, for some considerable time, haven't you, Mr. Dudley?

A. Yes, sir.

(Testimony of John W. Dudley.)

Q. What is that mountain-side composed of?

A. You mean the character of the soil?

Q. Yes.

A. It is loose clay, loam and sand—it is the breaking down of the country rock of the mountain-side.

Q. What is its ability to absorb water?

A. My judgment is that it would absorb water slowly and would [45] retain it for a considerable time—that is to say, if no drainage were provided it would drain off slowly.

Q. What is the formation—what kind of rock is the mountain-side, do you know?

A. You mean the—

Q. The geological formation.

A. I haven't examined it carefully.

Q. I think one of the witnesses testified it was schist. A. It is schist.

Q. Now, were you there at the time of the slide, Mr. Dudley?

A. I was there about 20 minutes or half an hour after it occurred.

Q. Did you see any water coming over the slide area at that time?

A. Yes, sir; quite a stream was coming over at the apex of the slide.

Q. Do you know where that stream of water came from?

A. Only by inference from the indications I found afterwards on the ground.

Q. What inference?

(Testimony of John W. Dudley.)

Mr. HELLENTHAL.—We object to that. Let him ask for the facts. He may tell what he saw, and he has already done that.

The COURT.—He has asked for the facts and he has asked for the indications.

Q. Did you see some water marks in this area, Mr. Dudley? A. Yes.

Q. I see some water marks here—what do they represent?

A. I have indicated right above the slide area two small streams indicating the water I found there in May, 1920, when I made the survey.

Q. Do you know where that water came from?

A. In one case it came from this natural gully or gulch just to the westward of the slide, flowed down through the slide, almost down to Gastineau Avenue, and then disappeared in the slide bed there; the other emerged from the slide material itself and trickled down just above where the old Koski house was, and there disappeared. [46]

Q. Was that bedrock water?

A. Apparently, yes, sir.

Mr. RODEN.—We desire to introduce in evidence the profile map.

Mr. HELLENTHAL.—No objection.

(Whereupon said map was received in evidence and marked Plaintiff's Exhibit "M.")

Q. I wish you would look at this picture, Mr. Dudley—what does that represent?

A. This picture represents the surface conditions of the ground prior to the time of the slide, with

(Testimony of John W. Dudley.)

the exception of the snow. My recollection is that there was very little snow at the time the slide occurred.

Q. Does that show the penstock and the conditions around the penstock as you found them?

A. Very distinctly.

Q. Does it show the tower you have marked in your slide area here? A. Yes, sir.

Q. Have you ever examined the hillside and mountain-side back of the penstock, Mr. Dudley?

A. Yes, sir, for a short distance.

Q. Is the grade there the same as below the penstock?

A. No, the grade is somewhat steeper.

Q. Considerably steeper?

A. Oh, a matter of a few degrees; yes.

Q. Now, did you ever see any indications of any slide having occurred above the penstock?

A. No, sir.

Mr. RODEN.—We desire to introduce this picture in evidence.

Mr. HELLENTHAL.—No objection.

(Whereupon said picture was received in evidence and marked Plaintiff's Exhibit "N.")

Mr. RODEN.—You may cross-examine. [47]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Dudley, you made your investigation—your survey, I think, in May, you said, didn't you?

A. Yes, sir.

Q. That is the May following the slide?



(Testimony of John W. Dudley.)

A. Yes, sir.

Q. And the conditions to which you have testified were the conditions which you found in May of that year? A. Yes, sir.

Q. And the photographs were also taken at that time, in May? A. On May 10th, yes, sir.

Q. That is all of these pictures that have been offered in evidence except the one picture that was last offered? A. Yes, sir.

Q. You know, I presume nothing about that. I am speaking now about the smaller pictures.

A. The smaller pictures, yes, sir.

Q. Now, Mr. Dudley, referring to your map here, Exhibit "A," what you call there, "The course of the freshet," that means the course that the water followed? A. Yes.

Q. And you could trace on the ground the place where water had flowed?

A. In May 1920, yes, sir.

Q. You could see that water had flowed along the line that you have indicated? A. Yes, sir.

Q. In the trail which you show upon your map here there was considerable wash? A. Yes, sir.

Q. The trail showed that considerable water had flowed in the trail itself? A. Yes, sir. [48]

Q. The sand was washed away? A. Yes, sir.

Q. And the larger boulders were there?

A. Yes, sir.

Q. Right at this point, at the upper end of the slide, you found a sharp bend in the trail, didn't you? A. Yes, sir.



(Testimony of John W. Dudley.)

Q. And you also found that the edge of the trail there had followed down somewhat lower than the level of the surrounding country, didn't you—right here—right above the slide—wasn't the edge of the trail somewhat depressed there?

A. The southwestern edge of the trail—the lower edge of the trail on either side of the break showed that there never was any rise in the land there,—in other words, the ground naturally sloped—

Q. Yes, the ground naturally sloped down?

A. Yes.

Q. Now, at that point you could see that some water had flowed over and slopped out of the trail and flowed up towards the apex of the slide? There were evidences that water had flowed—

A. Over the edge, yes, sir.

Q. Now, the evidences consisted of the fact that the grass was matted and was lying down—is that not true?

A. And filled with leaves, sticks and debris.

Q. And there was some wash material lying on the ground?     A. Yes, sir.

Q. There was no cut or abrasion in the soil whatever?     A. Not at that point.

Q. The only evidence that water had flowed there was that the grass was matted, and there was some leaves and moss and stuff of that sort that had washed down with the water?     A. Yes, sir.

Q. In the trail above that there was evidence that the ground had washed away?

A. Yes, sir. [49]

(Testimony of John W. Dudley.)

Q. Indicating a considerable flow of water in the trail itself? A. Yes, sir.

Q. That flow in the trail, however, would consist of all the water that had ever flowed down that trail prior to the time you made your examination, wouldn't it?

A. I shall not attempt to say it was all—it was the greater part of it, certainly.

Q. What I mean, Mr. Dudley, the trail had been there for some time? A. Oh, yes.

Q. And the water occasionally ran down there, with heavy rains, and so forth?

A. Yes, sir.

Q. And that would tend to make the condition you found on the ground? A. Yes, sir.

Q. But up the trail you found no evidence of water slopping off to the gulch to the westward?

A. No, I found no indication of the water going in that direction.

Q. You did find indications of the water going into Portal gulch? A. In two places.

Q. Now, the lowermost place where the water slopped out of the trail and went in the direction of Portal Gulch was about how far above the top of the slide—the apex of the slide?

A. About 80 feet on a level—would be more on a slope.

Q. How much would it be on a slope, Mr. Dudley? A. About 85 or 87 feet.

Q. Between 80 and 90 feet?

A. Between 80 and 90 feet; yes.

(Testimony of John W. Dudley.)

Q. A little less than a hundred feet?

A. Yes, sir.

Q. Where was the next place where it slopped over towards Portal Gulch?

A. Just a short distance below where it emerged from the penstock. [50]

Q. That would be approximately how many feet from the apex of the slide? I am speaking only approximately, Mr. Dudley—I don't want actual accurate measurements on that point.

A. About 140 or 150 feet.

Q. Those were the only two points, that is, aside from the other point to which you have referred at the apex of the slide—those are the only two other points at which the water had left the trail?

A. Well, as that is indicated on the plat, Mr. Hellenthal, the water left the trail at several points, cutting across bends of the trail—

Q. I know, but where you had—

A. But where it flowed away from it and did not return to the trail, there were only two points.

Q. And those points that you have referred to where the water cut across the bend of the trail were higher up?

A. They were all around from the apex of the slide to the trail.

Q. But that water there, it slopped over and simply made a short cut and then came back into the trail? A. That is it.

Q. In these places where the water slopped over into Portal Gulch, at these two points, there the

(Testimony of John W. Dudley.)

evidences of running water were just the same, approximately, as they were at the apex of the slide, were they not?

A. Indicated by leaves, sticks and debris, and the mat of the grass.

Q. There was no abrasion or cutting of the soil?

A. No, not apparent.

Q. At the point where the water flowed from the spout at the penstock, the water flowed down over the surface in one stream until it got some distance from the spout, did it not, towards the trail?

A. No, it was but a short distance below the spout where the stream apparently divided and formed a loop. [51]

Q. And then came together again into the trail?

A. Came into the trail.

Q. And you also traced that by the same evidences—that is to say, you saw leaves and sticks on the ground?

A. On one side of that loop there were evidences of a cutting, where water had gone over and scoured into the surface—it wasn't very great—and that was practically the only point that I saw it—two points there.

Q. Now, between the spout and where the loop commenced the water all flowed in one channel, did it not? A. Yes, sir.

Q. At that point there were no evidences that the water had scoured the ground at all? A. No.

Q. There wasn't any abrasion of the soil whatsoever? A. No.

(Testimony of John W. Dudley.)

Q. That is true, isn't it?

A. That is true; yes.

Q. The only way you have of tracing the course of the water there was by the leaves and debris that had been left on the ground as the water flowed over?

A. By the water action; yes, sir.

Q. There were evidences of moss and leaves such as would come from this penstock spout left along the course of the water—that is true, isn't it?

A. And sticks and sand.

Q. Sticks and things of that kind?

A. Yes, sir.

Q. And they evidently had been washed from the spout, where they had been deposited from the penstock?     A. Yes.

Q. Now, that trail, Mr. Dudley, runs right over the center of the hog-back, doesn't it—that is, approximately?

A. Approximately, yes. [52]

Q. It slopes from both sides—the hog-back slopes down in both directions, does it not—in a northerly and southerly direction from the trail?

A. Yes, sir.

Q. There is a gulch on the northerly side of the trail and a gulch on the southerly side—that is true, isn't it?     A. Yes, sir.

Q. Now, the natural drainage of water coming from that spout, if it were not for that trail holding it, would be in the direction of either one or the other of those gulches, would it not?

(Testimony of John W. Dudley.)

A. Unless something interfered with it, yes.

Q. If there were nothing on the ground to keep that water right on that hog-back it would run in one direction or the other, wouldn't it?

A. Yes, sir.

Q. It would immediately as it left the spout find its way to the lowest level of one gulch or the other? A. Yes, I would say that is true.

Q. And the only reason it flowed over the hog-back was because there was a trail there for it to run into—that is right, isn't it?

A. It would never have gotten into the trail unless something threw the water into the trail—having found the trail, it followed the trail.

Q. There might have been a sand bank, or something like that. A. Yes.

Q. But had there been no sand bank it would never have reached the trail, would it,—the natural drainage would have taken it one way or the other?

A. Probably so.

Q. In the slide area itself you found a spring—pretty well up towards the head of it, didn't you—a bedrock spring?

A. A flow of bedrock water, yes, sir.

Q. That was pretty well above the head of the slide—above the [53] Koski property?

A. Yes, sir.

Q. And then you found another place where the water ran over the slide area from this gulch?

A. Yes, sir.

Q. Indicating that the course of the slide was



(Testimony of John W. Dudley.)

lying across the gulch as it had originally been—  
isn't that true?

A. You wouldn't say across the gulch, Mr. Helenthal.

Q. Well, in the gulch—the debris was lying in the gulch?

A. The debris was lying in the gulch, yes, sir.

Q. And the water in the gulch ran over the slide debris instead of running in its natural channel, because the slide debris was in the gulch?

A. Yes, sir.

Q. And the slide area as indicated by you on the map, Mr. Dudley, indicates the area that is covered by debris, isn't that true?     A. Yes, sir.

Q. Wherever there were evidences of slide material you have indicated it as part of the slide area?     A. Yes, sir.

Q. And it doesn't indicate the chunk that broke off?

A. I couldn't say that from the indications I found at the time I made my survey.

Q. You couldn't tell where the chunk was that broke off—whether it was just where you have indicated it or not?     A. No, sir.

Q. The only thing you can indicate on your map is what you found of slide material lying on the ground?

A. Except at the upper end, of course—at the upper end.

Q. At the upper end you could tell?

(Testimony of John W. Dudley.)

A. The original land was broken away—there was no debris lying there.

Q. I mean with the exception of the broken part— A. That is true.

Q. And the gulch strikes the slide area at the point where you [54] have indicated by the contour lines?

A. Yes, sir.

Q. That is, if the gulch ran straight down originally as indicated on the map—followed the course indicated, about, oh, a third of the area that you have indicated as slide area would lie in the gulch, wouldn't it? A. Just about, yes, sir.

Q. About a third, and the area that slid would probably be about two-thirds of that?

A. Yes, sir.

Q. Now, coming to the penstock, Mr. Dudley, that was a square box built there at the end of the flume, wasn't it? A. Yes, sir.

Q. A sort of a box affair? A. Yes, sir.

Q. The spout that you have indicated was some distance from the bottom—how many feet, about, would you think? A. 9 or 10 feet, I would say.

Q. A considerable distance from the bottom, anyway? A. Yes, sir.

Q. The pipes leading from the penstock were right on the bottom of it, were they not—the service pipe? A. The large pipe, you mean?

Q. Well, there were two small pipes right on the bottom and a large one on the top?

A. I didn't see the small pipes at all—I merely

(Testimony of John W. Dudley.)

saw the large one, and that was a foot or a foot and a half above the bottom.

Q. And the other pipes had room enough to occupy the space below the large pipe. Now, if the large pipe were large enough, Mr. Dudley, to carry as much water as you could get into the penstock from the flume, then the water could never rise above the level of the large pipe—that is true, isn't it?

A. Provided the pipe had a free outlet. [55]

Q. If it were open, of course? A. Yes, sir.

Q. And the water could never rise to the level of that spout? A. I should judge not.

Q. Now, you know, Mr. Dudley, that the Alaska Juneau people have an equalizing tank to equalize the flow of water in the mill, don't you, or are you not acquainted with that?

A. I know the tank is there for that purpose, apparently.

Q. There is a large tank in the mill itself that is used to equalize the flow to the various places of use? A. Yes, sir.

Q. And the large pipe that leads from this penstock leads to that tank? A. Yes, sir.

Q. Now, under those circumstances there is no occasion for equalizing the flow at the penstock, is there? A. In the large pipe, no.

Q. The flow would be equalized at the mill tank?

A. Yes, sir.

Q. Then your testimony with reference to the use of penstocks, when you were testifying, applied

(Testimony of John W. Dudley.)

more to penstocks generally than to this penstock, is that not true?

A. It was a general proposition, yes, sir.

Q. And you were not testifying as to what this particular penstock was used for? That, of course, you have no knowledge of?

A. As I said before, the smaller pipe, the lower pipe, as I understood, was for the purpose of supplying the boiler water at the power plant—a very small pipe—and you can see that the fluctuations would probably be equalized by the small amount of water which might lie in the bottom of that penstock, below the lower edge of the large pipe. In other words, a foot or two of water would permit a sufficient equalization of that pipe—it would function as a reservoir or penstock; so far as the large pipe was concerned, however, it might not be. [56]

Q. As far as the boiler feed water is concerned, there would be no particular need of steadying that flow, Mr. Dudley?

A. No, not as long as there was enough to keep the pipe filled.

Q. You would not bother about that if you were building a penstock? A. No.

Q. The only use this penstock served, Mr. Dudley—this particular penstock, under the conditions I have just referred to, would be as a funnel to take the water into the pipe, isn't that right?

A. That is right, yes, sir.

Q. The spout you have referred to was a sheet-

(Testimony of John W. Dudley.)

iron spout, wasn't it?     A. Yes, sir.

Q. Looked like a tin spout?

A. It was a heavy sheet-iron spout.

Q. Now, in the penstock at the same elevation as the spout, was a trommel screen—a revolving screen, was there not?

A. That I know nothing of. It was not there, or I was not able to see it at the time I made the survey.

Q. You were not in the penstock?

A. I understood there was such a device there but I had never seen it.

Q. You did not examine it yourself?

A. No, sir.

Q. You know, however, that a penstock would have some such device?     A. Yes, sir.

Q. Every penstock you know of has some screening device?     A. Yes, sir.

Q. And you know there would have to be some spout to take the leaves and sticks out of the penstock?     A. Yes, sir.

Q. And this spout was evidently for that purpose, was it not?     A. Yes, sir. [57]

Q. There were some evidences on the ground, I think you said, of debris that had been taken out by the spout, at the time you were there?

A. Quite a little pile of stones there.

Q. And some leaves and moss?

A. Sticks and small pieces of timber—sticks and leaves and moss and stuff of that sort.

Q. General mass of debris that had been thrown

(Testimony of John W. Dudley.)

from the water? A. Yes, sir.

Q. Showing what the use of the spout and the screen was?

A. Yes; with the exception of the stones, perhaps.

Q. Now, I think you have already testified at this particular point the drainage was such that unless there was something there, as sand bank or something of that sort to sheer the water off, it would run one way or the other? A. Yes, sir.

Q. Now, as for the material on the mountain-side, Mr. Dudley, that is a clay substance, I believe you have testified—a clayish kind of soil mixed with some silt that would naturally deposit there from decaying vegetation?

A. Yes; and a certain proportion of small rock from the water action.

Q. The soil mass on the hillside is a clayish sort of soil, mixed with silt, I think you said, and with rock? A. There was some rock in it.

Q. And the rock was such as would break off the side of the mountain from time to time as a result of the action of the elements?

A. Yes; there was some of the rock which showed water action.

Q. And most of them were boulders of various sizes with sharp edges—that is true, isn't it?

A. Yes.

Q. And the soil, I think you said, being of a clayish character would hold a great deal of water and retain it a long time [58] if it once got in—that is true, isn't it? A. Yes, sir.



(Testimony of John W. Dudley.)

Q. But it would be slow to absorb it, that is true, isn't it?     A. Yes, that is true.

Q. Water running on clay will not be absorbed by it readily, but if it once gets in it will hold it a long time, that is true, isn't it?     A. Yes, sir.

Q. And that is the condition on the mountain-side?     A. Yes, sir.

Q. You don't know how much below the penstock the mill tank is, in elevation?

A. Not exactly, no.

Q. You never made any examination of that?

A. No.

Q. Now, referring to the cross-section map, Mr. Dudley, Exhibit "M," this shows a piece of ground—the distance between that straight line and the curved line, indicates the approximate chunk of ground that formed the slide mass, is that right?

A. Approximately, yes, sir.

Q. Where is the Koski house on that, Mr. Dudley?

A. I can indicate approximately. This profile map was not drawn for the purpose of showing any location—it was merely to approximately determine the angle of the slope. I imagine the Koski house would be about in here. Here the ground is somewhat more level—I think it was somewhere in here, like that.

Q. In drawing your contour map as well as this one, you placed the Koski house in a cut about 15 feet deep, is that not it, Mr. Dudley, from the slope that is indicated on the mountain-side?

(Testimony of John W. Dudley.)

A. I did not place it with reference to any cut, Mr. Hellenthal.

Q. I know. The lower edge of the Koski house was about 15 feet below the general slope of the mountainside—that is right, [59] isn't it,—no matter whether it was by reason of a cut—

A. I couldn't say that.

Q. Didn't you so testify before, Mr. Dudley?

A. I testified that there were indications that an excavation might have been made there.

Q. Yes, exactly,—and the excavation would be about 15 feet deep, wouldn't it?

A. Possibly 15 feet.

Q. And your maps are made upon that basis, are they not?

A. Oh, no; my maps are made without any reference to any cut there.

Q. I know, but your maps are so made that the lower floor of the Koski house, at the point where the Koski house met the bank, was about 15 feet below the slope of the mountain—that is true, isn't it?

Mr. RODEN.—We object to the question as not being cross-examination; there is nothing at all here about any cut.

The COURT.—The objection is overruled.

Q. That is true, isn't it, Mr. Dudley?

A. No, not exactly, Mr. Hellenthal.

Q. What is the exact truth?

A. The exact state of affairs is that I determined instrumentally what the contour of the ground was

(Testimony of John W. Dudley.)

at the point where I was informed the Koski house had stood, and then my information from those living adjacent to it led me to place the site of the Koski house where I did. It had no reference to any cut whatever.

Q. No, but the site of the Koski house as placed upon your map here, was so situated upon the ground that the upper edge of the foundation, the edge towards the mountain, was about 15 feet below the general slope of the hill—that is true, isn't it, as you have placed it upon your map?

The COURT.—Below the surface?

Mr. HELLENTHAL.—Below the surface, yes.

A. I don't think that is the case,—I wouldn't want to say that, Mr. Hellenthal. [60]

Q. What width did you give the Koski house of this map, Mr. Dudley? A. About 40 feet.

Q. And then there was a sidewalk about 6 feet wide on the end of it, wasn't there?

A. I was so informed.

Q. That would make the house and the sidewalk about 46 feet? A. Something like that.

Q. And the lot upon which it stood was about 50 feet? A. Fifty feet.

Q. So the house and sidewalk occupied the entire lot with the exception of about 4 feet?

A. Yes, sir.

Q. I want to refresh your memory, Mr. Dudley, with reference to your testimony,—I am not doing this to impeach you—it is merely to refresh your memory so that we can understand each other. I

(Testimony of John W. Dudley.)

don't want either you or the jury to think that I am trying to impeach you. Now, at the previous trial, when you testified in answer to questions, did you not testify as I am reading to you: "Q. That would place the house in a cut about 15 feet deep from the top of the surface as it originally stood, would it not?" Your answer was: "Probably so at the back corner." Is that right, Mr. Dudley?

A. Will you please read the answer given just before that, Mr. Hellenthal? I don't quite get the connection there.

Q. All right, I will have to read a couple of more answers so as to make it perfectly clear and to be perfectly fair with you: "Q. Now, did you plat the stairway on there, Mr. Dudley, that was on the westerly side of the house? A. The stairway that existed at the time I made the survey had been rebuilt, I think, by the Bachs, who had a house directly opposite. Q. Not on the east—on the other side, Mr. Dudley. A. No, I did not plat that. Q. That would be an addition, then, on the Koski lot? A. Yes, sir. Q. You know that stairway was about 6 feet wide, do you not? A. Yes; I have seen [61] such a stairway there. Q. That would make the house about 46 feet? A. Something like that. Q. And the house stood on this westerly side, right near the boundary line of the lot, did it not? A. I cannot state that definitely. Q. That is about the way you have it platted, isn't it, as being near the westerly boundary? A. Being near the westerly boundary, yes, sir, as far as I could determine.

(Testimony of John W. Dudley.)

Q. And the stairway would extend to near the westerly boundary—I mean not a great distance from the western boundary line? A. Probably not—it was not in existence when I made the survey. Q. In determining the elevation from the Koski house to the penstock, Mr. Dudley, at what level did you place the foundation of the Koski house,—how much of an excavation did you allow for that? A. I had only the information given me by those living in the house directly opposite there that the Koski house had about the same elevation as the Bach house, which is still standing, and I took the elevation there as  $109\frac{3}{4}$  feet above high-water mark. Q. That would place the house in a cut about 15 feet deep from the top of the surface as it originally stood, would it not? A. Probably so at the back corner. Q. At the back corner, that is what I mean. A. Yes. Q. That is, the cut was about 15 feet deep at the back side of the house? A. That was my information, yes, sir. Q. And your calculations in determining the elevation of the house above sea level are based upon the proposition that a cut 15 feet deep had been made for the foundation? A. Yes; as I say, that was the only way I could determine, even approximately, what that was, was the information given me by those residents.”

A. That is enough, Mr. Hellenthal—I understand now.

Q. That was right, wasn't it, Mr. Dudley?

A. That was right, yes, sir.



(Testimony of John W. Dudley.)

Q. The best information you had was that there was a cut about 15 feet deep? [62]

A. Yes, sir.

Q. And you based your calculations in making your survey upon that hypothesis, in locating the Koski house on the map—in finding your elevations?

A. The cut was incidental to the location, yes.

Mr. HELLENTHAL.—Yes, certainly. That is all.

Redirect Examination.

(By Mr. RODEN.)

Q. The location of the Koski house is not shown with relation to any cut on any of these maps, is it?

A. No, sir.

Q. Is it customary, Mr. Dudley, in the construction of a penstock to make some arrangements to take care of any possible overflow?

Mr. HELLENTHAL.—We object to that, your Honor,—what is customary. It might be competent to say what is proper, if Mr. Dudley can show where there would be any likelihood of an overflow—it might be,—and it is not redirect examination.

The COURT.—It is not redirect examination.

Mr. RODEN.—Probably not—Mr. Hellenthal developed that Mr. Dudley knows all about penstocks,—I don't care.

The COURT.—You may ask the question, but it opens it up to recross-examination.

The WITNESS.—It is good engineering practice



(Testimony of John W. Dudley.)

to provide an outlet, spillway or wasteway in all reservoirs and penstocks.

Q. Under the conditions as they existed up here, would that have been good engineering?

A. Yes, sir; that would have been a good, safe precaution.

Q. Would have been a good, safe precaution?

A. Provided a spillway which would conduct any possible overflow of water from that penstock to a natural drainage channel where it would reach tide water, without damaging any property.

Mr. RODEN.—That is all. [63]

Recross-examination.

(By Mr. HELLENTHAL.)

Q. Now, Mr. Dudley, that would be a penstock where there would be a chance of water going over the top of it, isn't that true? A. Yes.

Q. Now, if you have a penstock where the service pipe leading from the penstock is kept wide open and is larger and has a greater capacity than the flume running into it, would there be any possibility of an overflow?

A. There might be, Mr. Hellenthal, if the screening device were so clogged up that the water couldn't flow from the flume into the penstock and had to go over the screen.

Q. There would be no possibility of an overflow excepting something happened to the screen, is that not true? A. That is probably true, yes.

Q. If there were no clogging of the screen there

(Testimony of John W. Dudley.)

there would be no possible chance of any water getting out of the penstock?

A. Not under the conditions you have described.

Q. And there would be no occasion for any overflow? A. Not in that case.

Q. And if you had a screening device that was so built—8 feet long, and driven by the safest power that can be had, and revolving, there would be no reason to anticipate that that thing would ever get clogged, would there?

A. Unless something happened to the motive power.

Q. Unless something happened to the motive power it would not stop? A. No, sir.

Q. And as long as it kept running there would be no possible chance for the water to get out of it?

A. No probable chance.

Q. The only thing that would come out of it would be the leaves and the moss?

A. Yes, sir; under ordinary working conditions.  
[64]

Q. Now, if you built a flume or anything else under that moss and debris spout it would immediately fill up with moss and debris, wouldn't it?

A. In the course of time;—a longer or shorter time, yes.

Q. It wouldn't carry any water, would it?

A. Not unless the water overflowed through the spout.

Q. The thing would be full of debris, and the flume would be simply a place—a catch-all for moss

(Testimony of John W. Dudley.)

and debris, isn't that right?

A. Unless it was kept clean.

Q. Yes, unless you kept a man there to keep it clean. Now, it is just as possible that the flume would break at any point, isn't it,—a flume might break anywhere, might it not? A. Oh, yes.

Q. Those things happen? A. Yes, indeed.

Q. Wouldn't you think it safe engineering, or proper engineering, or intelligent engineering, for a man to build a second flume under the other flume to catch the water in case of a break in the flume?

A. No, sir.

Q. Oh, you wouldn't think it would be good engineering to build a second flume? A. No.

Q. And yet that flume would eventually fill up—the flume you would build at the penstock,—it would eventually fill up with moss and stuff if the trommel screen kept revolving and the moss kept coming out of it?

A. Yes, unless it were kept clean.

Q. And if you had a flume on that hillside you would have to have a closed flume, wouldn't you?

A. You mean for that possible waste water.

Q. Yes. The flume couldn't be laid right down that hillside—an open flume, could it? [65]

A. Are you speaking of a flume to take any possible water from the discharge spout?

Q. Yes. You would have to have a box—

A. You would have to have it covered except at such point where the water would come from the discharge spout into the flume.

(Testimony of John W. Dudley.)

Q. It would have to be a closed affair?

A. Yes, sir.

Q. Kind of a big pipe?

A. It would be a box flume.

Q. A flume built like a pipe?

A. Otherwise it would stop up with sand.

Q. The sand would fall into it, and everything else, if it was open, wouldn't it? A. Yes.

Q. And the water wouldn't overflow because of the steepness of the hill?

A. The water would overflow that box flume just as well—

Q. It wouldn't make much difference whether there was a box flume there or not—the thing would overflow if there was plenty of water come out?

A. Yes, sir.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. RODEN.)

Q. You would have a flume from the end of the spout to take it down to a safe place?

A. Yes, sir.

Q. And the size of that waste flume would be in proportion to the amount of water that might come down there by means of an overflow?

A. That might overflow through the discharge spout; yes, sir.

Q. And this thing would overflow if the screen got sufficiently clogged? A. Yes, sir. [66]

Q. And the screen is of such construction that it would clog a good deal sooner than a flume would?

(Testimony of John W. Dudley.)

A. Yes, sir.

Q. Do you know whether it is possible to shut off this service pipe at any place?

A. It is possible, yes.

Q. And if it is shut off and the water fills up in the penstock, it overflows?

A. I understand that there is a large valve by which it can be closed at any time.

Q. And also something might get into the pipe to shut it off?

A. I doubt that, Mr. Roden,—I don't think with the devices they have that anything could get into that large pipe that would stop it or clog it.

Q. It would not be much of an expense to put a waste flume down the hill there, would it?

A. Not very much.

Q. Just a few dollars?      A. Yes, sir.

Mr. HELLENTHAL.—I think that is pretty leading.

Q. Mr. RODEN.—That is all.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. Now, Mr. Dudley, referring to the matter that Mr. Roden just referred to, where would you lead that flume to?

A. Right into Portal Gulch.

Q. Into Portal Gulch?

A. Yes; that is the natural place for it.

Q. Then the water would run down Portal Gulch, wouldn't it?      A. Yes, sir.

Q. Would that be a safe place?

(Testimony of John W. Dudley.)

A. For all I can see, yes.

Q. That would be a safe place? [67]

A. Yes; a natural drainage channel; yes, sir.

Q. If you were to build that flume you would build it from the spout to Portal Gulch?

A. Yes, sir, or near there.

Q. Now, if there was no sand on the ground or anything else, you have testified that the water would naturally run into that gulch, haven't you—if there were no obstruction?

A. If there were no obstruction.

Q. And if the flume should happen to be obstructed by sand or anything else, or filled with sand, it wouldn't carry anything, would it?

A. No, it would have to be cleaned to carry it.

Mr. HELLENTHAL.—That is all.

Mr. RODEN.—That is all.

(Witness excused.)

(Whereupon court adjourned until 2 o'clock P. M.) [68]

#### AFTERNOON SESSION.

March 23, 1921, 2 P. M.

#### Testimony of John Anderson, for Plaintiff.

JOHN ANDERSON, a witness called on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

#### Direct Examination.

(By Mr. RODEN.)

Q. Your name is John Anderson?



(Testimony of John Anderson.)

A. Yes, sir.

Q. Where do you live, Mr. Anderson?

A. Chichagoff.

Q. How long have you been at Chichagoff?

A. 13 months.

Q. What is your business, Mr. Anderson?

A. Carpenter.

Q. You are a carpenter over at Chichagoff?

A. Yes, sir.

Q. Were you in the city of Juneau on the 2d day of January, 1920, at the time of the slide?

A. Yes, sir.

Q. Where were you living at that time?

A. Mrs. Koski's house.

Q. Where is the Koski house located, or where was it located?

A. It was located on Gold Avenue, or whatever you call it.

Q. What avenue did you say?

A. Gold Avenue.

Q. I show you Plaintiff's Exhibit "N," and ask you if you can point out on this picture the Koski house? A. Yes, sir.

Q. Show it to the jury.

A. That is the Koski house right there.

Q. The Koski house is located—

A. The big house.

Q. The big house right above the lamp globe here? A. Yes. [69]

Q. About what time in the morning were you in that house—in the Koski house?

(Testimony of John Anderson.)

A. Oh, I was there all morning, but I was in the front room just a little before the slide—about half an hour or so before the slide.

Q. What did you do about half an hour before the slide?

A. There was three or four of us in the front room—we were sitting around the front room talking, and Pete Koski come in in the front room and called attention to the water that was coming down the sidehill.

Q. Did you get up and look at the water?

A. Yes, sir.

Q. Where was the water coming down?

A. It was coming down off of the hill against the house.

Q. How much water was coming down at that time, Mr. Anderson?

A. There was quite a bit of water was coming down there.

Q. Do you know where this water was coming from—where it originated?

A. It was coming down from the hill.

Q. Straight back up the hill? A. Yes, sir.

Q. How is the hill there?

A. The hill is kind of round—it isn't perfectly flat—that side is pretty close to the house.

Q. It is somewhat in the nature of a hog-back?

A. Yes, sir.

Q. What did you do after you saw this water coming downhill?

A. I went upstairs in my room, put on my boots,

(Testimony of John Anderson.)

and went out from the second story and went up the sidehill.

Q. Was the water still running when you came back there?    A. Yes, sir.

Q. Was there anyone else around about the water?    A. Pete Koski came after me.

Q. What did you do?

A. I went up the sidehill and I was going to see where the water [70] is coming from, if I can, and turn the water off some way.

Q. How far up the sidehill did you go?

A. Between 30 and 40 feet, I guess.

Q. What did you see then as to where the water was coming from?

A. I couldn't see exactly where the water was coming from, because the sidehill was all covered with water—was running in every direction, and through the brushes, and I couldn't get through any more; and Pete Koski was on the platform behind me at the end of the house, and I think he had a shovel in his hand, and he was calling me back.

Q. You know where the flume of the Alaska Juneau Company is located, or was located at that time?    A. Yes, sir.

Q. Between where you were on this sidehill and the flume and the penstock of the Alaska Juneau Company was there anything to obstruct your view, looking uphill?

A. Well, I don't know—there was some little brushes over there but I didn't pay much attention.

(Testimony of John Anderson.)

I didn't have much time—I didn't have enough time to look to see whether the water was coming over the flume or where it was coming from.

Q. Did anything happen while you were on this sidehill?

A. When Pete Koski was calling me back the first time I was still going up the sidehill, and he called me the second time, so I turned myself around and started back, and when I turned around and started back I heard a noise behind me.

Q. Do you know what caused that noise?

A. I looked back and I saw the slide was just breaking loose—the tower was laying close to the hill.

Q. Which tower are you speaking about, Mr. Anderson?    A. The steel tower.

Q. Can you show where the steel tower is located on this exhibit?    A. Yes, sir.

Q. What is it? Show it to the jury.

A. That is the steel tower there.

Q. Did you notice anything in the way of the wires on the steel [71] tower breaking loose?

A. Yes, sir.

Q. What happened?

A. Well, when the wires broke loose from the tower they splashed together and had quite a bit of fire on the sidehill, at the time when the wires pulled off of the tower.

Q. And you say you saw the ground break loose, —where did you see this ground break loose?

(Testimony of John Anderson.)

A. Just about where you can see on the sidehill over there now.

Q. About how far above the tower?

A. Oh, I should judge about a hundred feet or so, or more, probably—I don't know exactly the distance.

Q. It broke away about a hundred feet above the tower?     A. Something like that.

Q. And then came against the tower?

A. Yes, sir.

Q. How did this tower come down—where did it strike?

A. The tower come down and come right on top of the Koski house.

Q. Now, at the time you saw this tower break loose, and at the time the tower broke loose, did you see any water running over this ground that was breaking loose?

A. Not that I ever noticed.

Q. You didn't notice it?     A. No, sir.

Q. What did you do?

A. I was laying down in the brush at the time, and all this slide broke loose through there, and I was afraid of them wires, and I was watching all this slide come down, then I got up and started down the hill.

Q. This slide that came down, what was it composed of?

A. Well, must be mud and some water, I guess.

Q. What else,—what was the condition of the material—the ground—the earth?

(Testimony of John Anderson.)

A. The ground was pretty muddy afterwards when the slide come down, when I got through afterwards on the sidehill. [72]

Q. How did you get out of there?

A. Well, I come down the sidehill, and then Mrs. Bach, she come running out from the house, on the porch over there, and she was screaming, and I tried to get over there—I thought she was hurt, too, at the same time, and when I started down, she had a chicken-house fence behind there, and I couldn't get through there—the water was running pretty bad all through that side there, too, so I walked around and jumped over another fence—she has another fence running around the porch, and I jumped over the fence, and went on the porch over there.

Q. Where is the house that Mrs. Bach was in?

A. That is the house there.

Q. That is the house right alongside of the Koski house?

A. Yes, sir; right alongside the Koski house.

Q. That house is still standing?

A. That is still standing in the same place over there.

Q. You can see it from here?      A. Yes, sir.

Q. You say there was water coming around the Bach house, too?

A. Yes, sir; the water was running right against the Bach house and on the other side of the Bach house, that I seen at the time when I come down.

Q. What became of the Koski house?



(Testimony of John Anderson.)

A. The Koski house come down the hill.

Q. Were there any other houses come down the hill?

A. John Larson's come down the hill.

Q. Where was John Larson's house situated with reference to the Koski house?

A. It was located below the Koski house.

Q. Is that on the picture?

A. Yes, sir, I guess it is. That is the Larson house there, right in front of Koski's house.

Q. Did any houses on the other side of Koski's come down?

A. No; this little small house came down part ways against the [73] bridge—that is there yet.

Q. These houses came through the bridge?

A. Yes, sir, came through the bridge.

Q. Did it carry any houses away below the bridge?

A. Well, I don't know—there must have been some cabins down there near the Goldstein building; where it come against the Goldstein building, it turned that around kind of corner-wise, down below, on Front Street.

Q. Then you say you went over to the Bach house, went around to where the chicken-yard was, and what did you do?

A. I went on the porch where Mrs. Bach was standing, and I thought she was hurt, but I see she wasn't hurt. I told her, "You better get in the house and get some clothes on and come downtown—get out of the house—chances are something else

(Testimony of John Anderson.)

slide down afterwards," so I left her and came down the sidehill, and the first thing I seen Larson standing on the sidehill in the mud.

Q. Where was Larson standing in the mud?

A. Well, he was standing about 50 feet, or something like that, below the trestle-work—where the trestle-work is in there now.

Q. That is below Gastineau Avenue? A. Yes.

Q. The street there is a trestle?

A. Yes, a trestle.

Q. How deep was he in the mud there?

A. He was around to his knees, I guess, somewhere—I didn't pay much attention to it.

Q. Did you help him?

A. Yes, sir, I helped him to get out of there.

Q. What did you do after that?

A. I come downhill through there and I seen somebody else was taking Mrs. Koski out, and I helped her get out over the stairway over there,—there is another stairway coming down Front Street— [74]

Mr. HELLENTHAL.—I object—that is immaterial, your Honor.

Mr. BODEN.—Yes, I will get away from that.

Q. Now, the water that was coming down behind the Koski house, how much water was coming down, about?

A. It was coming down quite a bit of water—the water was scattered all over that side of it.

Q. How long had this water been running that you know of before the slide?

(Testimony of John Anderson.)

A. What I know is maybe half an hour—something like that—or 20 minutes,—something like that.

Q. Did you see any water running down the gulch just this side of the Koski house, or over in there?     A. No, I didn't notice any in that.

Q. Do you know how long the water continued to run?

A. No, I haven't any idea.

Q. Now, describe the location of the Koski house—that is, the construction of it, Mr. Anderson,—how big a house was it, about?

A. Well, the house was, I guess, about 40 feet long.

Q. And about how wide?

A. Between 20 and 22 feet, I should judge.

Q. And how was the foundation put in there?

A. Well, the foundation was kind of levelled off from the bank—that end to the south end of the bank, there was cut in quite a bit, on one corner.

Q. That would be the up hill and down channel corner that you refer to?

A. Yes, towards the Bach house.

Q. About how much was that cut in there?

A. There was a little—I don't know—between 3 and 4 feet high, and it kind of sloped over there a little bit, just in the corner where the stairs come down.

Q. And then you say this cut was about 3 or 4 feet high, and it was levelled off a little—sloped off a little?     A. Yes, sir. [75]

(Testimony of John Anderson.)

Q. To the hill—took its natural course?

A. Yes, sir.

Q. How was the end this way, uphill?

A. This way, on this side, right up to the corner of the house there wasn't any cut that I can remember. It come kind of down and sloped more to the sidewalk that was over there, built right up to the sidehill, and the natural bank come up from the corner.

Q. About how long was this cut that you speak about?

A. Oh, it was about 12 or 14 feet, something like that.

Q. That would be 12 or 14 feet from the downstream uphill corner down this way?

A. Yes, sir; there was the biggest cut in that corner over there.

Q. And the highest cut in this corner, to your best estimate, was 12 or 14 feet long, and it came to nothing down at this corner?

A. Something like that; yes.

Q. And how was it on the front side?

A. The front side was built on posts.

Q. Standing up on posts?      A. Yes, sir.

Q. Was there a sidewalk back of the house?

A. Yes, there was a sidewalk in the front, sidewalk on the end, and sidewalk on another side—both sides of the house would be a sidewalk.

Q. Let us get it clear—was there a sidewalk on the hillside?      A. Yes, sir.

Q. All right—how wide was that sidewalk?

(Testimony of John Anderson.)

A. About 4 feet.

Q. What excavation, if any, did it require to put in this sidewalk,—was any digging done there to put that in?

A. I guess there must be some on that upper part, and maybe there was some at the northern end, too—kind of levelled off a little—just enough to get the sidewalk in.

Q. And then there was a sidewalk on the front side of the building, too? [76] A. Yes, sir.

Mr. RODIN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. There was a little wall, Mr. Anderson, at the lower end, behind the house—that is, down-channel, there were some loose rocks had been piled up and made a little wall straight up about 3 feet; is that right?

A. In the front of the house, do you mean?

Q. Behind the house.

A. I don't know—I don't remember that.

Q. Don't you remember you testified that behind the house there was a little wall there?

A. There was a little cut right in the corner of the house.

Q. Right in the corner? A. Yes.

Q. That was made of rocks piled up?

A. I don't remember that.

Q. You don't remember what it was made of?

A. No, sir.

(Testimony of John Anderson.)

Q. Right in the upper corner there was a little wall about 3 feet high?

A. Something like that—between three and four feet high.

Q. Something like that? A. Yes, sir.

Q. And that wall was straight up and down?

A. Yes, sir.

Q. Then there was no wall behind the kitchen door, was there?

A. No—there was kind of a slope—sloped off a little bit—there was no straight cut through there at all.

Q. The wall was only on the side toward the Bach house? A. Yes, sir.

Q. That rock business? [77]

A. Yes, sir; right in the corner.

Q. And that was about how long, would you think—4 or 5 feet?

A. You mean lengthwise of the house?

Q. Yes.

A. What I mean altogether I testified between 12 and 14 feet, something like that, cut down.

Q. You mean the bank, but I am speaking of the wall—that little rock pile where those loose rocks had been piled up.

A. I didn't see no rock pile.

Q. Didn't see any wall at all—anything to hold it up against the bank?

A. I don't know what the bank was held up—I don't know whether there was any rocks. I remember some people were talking there was a solid



(Testimony of John Anderson.)

boulder in over there, but I couldn't tell that.

Q. You merely want to say that the bank stood straight up about 12 or 14 feet?

A. Something like that, yes, sir.

Q. And you don't know whether there was any wall there or not?

A. No, sir, I don't know what was piled in there.

Q. But the bank didn't stand straight up that much except on the Bach house side?

A. On that side; yes, sir.

Q. And it sloped down toward the gulch?

A. Yes, sir.

Q. Where the floor of the gulch was, the house stood on a level with the floor of the gulch?

A. Yes, sir.

Q. And whatever cut was made to make the foundation was in the bank from the gulch toward the Bach house—in that end of the house?

A. In the corner, yes, sir.

Q. After it had gone straight up three or four feet in the bank it sloped gently up the hill; isn't that right?     A. A little, yes.

Q. And it sloped back a little ways, and then it struck the [78] level of the hill, where it originally was, isn't that right?     A. Yes, sir.

Q. What you mean to say, the bank was 3 or 4 feet straight up on the Bach house corner?

A. Yes, sir.

Q. And then it sloped up to where it reached the natural bank, and was on a slope—wasn't straight up?     A. Yes, sir.

(Testimony of John Anderson.)

Q. And it was about 15 to 16 feet before you got to where there was brush and grass on the bank?

A. No, I don't think it was that far—15 or 16 feet.

Q. How many feet would you think?

A. Must have been about 8 feet.

Q. Eight feet from where it was straight up?

A. No, from the platform—from the sidewalk.

Q. I am speaking of the Bach house end now—from the Bach house end to where there was grass and brush it would be about 8 feet, and at the kitchen door it would be about 8 feet up from the sidewalk; isn't that right? A. No, sir.

Q. How much would it be?

A. You mean from the door?

Q. The kitchen door was about the middle of the house? A. Yes.

Q. Now, in front of the kitchen door there the grade was about 8 feet—that is, the raw bank was about 8 feet from the sidewalk to the top, where the grass was? A. Yes, sir.

Q. That is right, isn't it? A. Yes, sir.

Q. And on the other end there was no bank at all because that other gulch came down?

A. That is right.

Q. That is right, isn't it?

A. Yes, sir. [79]

Q. And on the Bach house side the bank would be about 8 feet from that little wall—it would be about 8 feet from there to where the grass was?

A. Yes, sir.

(Testimony of John Anderson.)

Q. Just to refresh your memory on the matter of time, Mr. Anderson—I call your attention to this, not to impeach you, but just to refresh your memory. You testified on the former hearing, didn't you, on this time matter—I don't suppose you remember exactly how much time any of these things took? A. No, sir, I do not.

Q. And it is only a matter of approximation—that is, you make a guess of it, that is all you remember? A. Yes.

Q. Now, on the former hearing you testified about this way: “Q. You were in the front room, I believe you said, just before the slide? A. Yes, sir. Q. And you went out from there to the sidewalk on the back of the house? A. I went in through the kitchen, yes. Q. That was just about 5 minutes before the slide came? A. Yes, something like that—five or more—something like that—around that time. Q. Might have been 10 minutes? A. Yes. Q. Five or ten minutes—a short time like that? A. Just a short time.” That was the situation, wasn't it, Mr. Anderson?

A. Something like that, I guess.

Q. When you speak of the time you merely approximate it? A. Something like that, yes.

Q. And it would take you in the neighborhood of 5 or 10 minutes—

A. 15 minutes—something like that.

Q. From the time you left the front room until the slide happened? A. Yes, sir.

Q. That is right, isn't it? You were in the front

(Testimony of John Anderson.)

room that morning, and you went out behind the house, I believe? A. Yes, sir.

Q. When you came behind the house, I believe you said there was a great deal of water running down over this raw bank? [80] A. Yes, sir.

Q. That exists behind the house. I think you also said that there were a number of rocks that had come down? A. Yes, sir.

Q. The rocks were scattered along on the sidewalk behind the house? A. Yes, sir.

Q. They were rocks about how big would you say, Mr. Anderson?

A. Some about that size, what I seen when I went out—I didn't take much time to look around when I seen the water was coming down.

Q. They were different sizes?

A. Yes, they were different sizes; and some muck was washed off of the bank, from the bank on the sidewalk.

Q. There was some dirt and some muck and some rocks? A. Yes, sir.

Q. And the rocks were small rocks, maybe from 6 to 8 inches in diameter?

A. Something like that.

Q. You saw that, and you went and put your boots on, didn't you? A. Yes, sir.

Q. I suppose you went about as fast as you could under the circumstances?

A. Yes, I went up fast.

Q. And as soon as you had your boots on you went out of the house? A. Yes.

(Testimony of John Anderson.)

Q. You went out of the back door that leads from the second story?     A. Yes, sir.

Q. And went out on to the bank. When you got there, I think you said, there was water running all over the bank?     A. Yes, sir.

Q. I think you said there was 15 or 16 streams?

A. I couldn't say how many streams.

Q. I didn't mean to hold you to any particular number, Mr. Anderson, but there were a lot of streams?

A. They were running all over that bank. [81]

Q. A great deal of water?     A. Yes, sir.

Q. The water was running so deep that in places where there were little holes you stepped in and it would be 16 to 18 inches deep?

A. Yes,—what I testified was it would be 12 inches deep.

Q. Where there was a hole?     A. Yes, sir.

Q. But it was generally in streams all over that bank?     A. Yes, sir.

Q. And the water was muddy, I think you said, at that time?     A. Yes, the water was muddy.

Q. And there was no mud on the ground—you walked through the water?     A. Yes, sir.

Q. That ground was not muddy?

A. Of course on the edge of the sidehill there was a little ice some places.

Q. But it was reasonably firm when you stepped on it?     A. Yes, sir.

Q. There was no mud in it—the water ran over the top of it, that is right, isn't it?

(Testimony of John Anderson.)

A. Yes, sir.

Q. And it ran behind the Koski house, and behind the Bach house, and everywhere?

A. Yes, sir.

Q. A great quantity of water? A. Yes.

Q. Now, then, while you were going up the hill you heard a noise behind you?

A. Yes—that is the time when I turned around and started down from the hill.

Q. That was the first you knew of the slide, was when you heard the noise? A. Yes, sir. [82]

Q. And you had seen or heard nothing before that noise occurred—that is right, isn't it?

A. Yes, sir.

Q. When you looked back what did you see?

A. I saw the ground was just breaking loose—the tower was leaning down the sidehill.

Q. That is the first you saw of it?

A. That is the time I turned around and looked back.

Q. That was when you turned back?

A. Yes, when I turned and started back—when I heard the noise I stopped and looked back at the noise.

Q. And you saw it was coming over?

A. Yes, sir.

Q. Then you looked up the hill?

A. No, sir, I didn't look any more up the hill.

Q. But you looked up the hill about that same time?

A. Yes, sir; I was looking up the hill when



(Testimony of John Anderson.)

the tower came down—I was watching the wires.

Q. You saw where the ground was cracked up above?

A. No, I didn't see where the ground was cracked, but it was broke loose quite a ways when I saw it.

Q. There was quite a big opening at the top where the slide broke loose at the time you first saw it?

A. The ground was loose already, and the tower was swinging down at the same time.

Q. And, of course, you couldn't tell how big that opening was?

A. No, sir; I couldn't tell.

Q. All you can say there was a big opening when you first saw it?     A. Yes, sir.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [83]

**Testimony of William M. Garster, for Plaintiff.**

WILLIAM M. GARSTER, a witness called on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. What is your full name?

A. William Mortimer Garster.

Q. What is your business?

A. I am a laborer, I guess.

Q. How long have you been around the town of Juneau, Mr. Garster?     A. About eight years.

(Testimony of William M. Garster.)

Q. At the time of the slide, January 2d, 1920, in whose employ were you?

A. Alaska Juneau Gold Mining Company.

Q. What particular employment were you following on the 2d of January?

A. Driving the ore train.

Q. Had you been in that same employment for some time prior to this date? A. I had.

Q. Had you been, and are you acquainted with the flume and track as it came out of the tunnel there on the sidehill? A. Yes.

Q. And are you acquainted with what has been called the penstock in this case? A. I am.

Q. And the chute that we spoke about this morning? A. Yes, sir.

Q. Have you at any time seen any water running out of this spout? A. I have.

Q. When was that, Mr. Garster?

A. Well, I haven't any definite time,—I imagine within that year, anyway. [84]

Q. Could you testify that you have seen water running out of the chute within six months prior to the slide? A. I had.

Q. About how often? A. About twice.

Q. Where was this water coming from?

A. It was coming out of that little spout that came out of the penstock.

Q. Where did the water go to?

A. I don't know—I have no idea—I was just on my way to work and noticed it.

(Testimony of William M. Garster.)

Q. You saw it come out of the spout and fall on the ground, there?

A. It naturally fell on the ground, I suppose,— I never stopped and looked at it.

Mr. RODEN.—That is all.

Mr. HELLENTHAL.—No questions.

(Witness excused.) [85]

**Testimony of John Larson, for Plaintiff.**

JOHN LARSON, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth; testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. What is your name?     A. John Larson.

Q. Where do you live, John?

A. Live in Juneau.

Q. How long have you lived in the town of Juneau?     A. About 8 or 9 years.

Q. Where did you live in the town of Juneau on or about the 2d day of January, 1920?

A. I was living right on the sidehill, where the slide was.

Q. Where were you living with reference to the Koski house?     A. Right below the Koski house.

Q. Right below the Koski house?     A. Yes.

Q. And on the 2d day of January, 1920, about what time did you get up?

A. I got up at 8 o'clock.

(Testimony of John Larson.)

Q. About 8 o'clock,—did you go outside of the house then?

A. No; first I make a fire in my stove,—I had four stoves and I built a fire.

Q. All right, you built a fire in your stoves, and what did you do?

A. Then I went over to Koski's.

Q. You went over to Koski's house,—what was your purpose in going over there?

A. I went and had my breakfast—I was boarding there.

Q. All right. At the time you went over there what did you see in the way of any water around the house?

A. No, I didn't look—well, I look in that little canyon by [86] the front door.

Q. You looked in the little draw that comes this side of the house? A. Yes.

Q. Did you see any water in there?

A. I didn't see much.

Q. Did you see any? A. Yes, a little.

Q. Then you went in the house?

A. I went in the house.

Q. And had your breakfast?

A. And had my breakfast.

Q. About how long did you stay in there?

A. I stayed about 20 minutes. About 10 minutes to ten I came out there.

Q. Where did you go to?

A. I came out from the side—on the kitchen door there.

(Testimony of John Larson.)

Q. Where was the kitchen door?

A. That was on the sidehill there.

Q. Back part of the house?     A. Yes.

Q. Towards the sidehill. Did you see anything going on there at that time?     A. Yes.

Q. What was it?

A. I saw some water was coming down the hill.

Q. Water was coming down the hill?     A. Yes.

Q. About how much water—give us an idea.

A. Oh, there was quite a bit there.

Q. Where was that water coming from?

A. It was coming from up the hill there.

Q. Do you know how far up the hill it came from?

A. No, I couldn't see how far it was,—I was down on the sidewalk and I couldn't see up. [87]

Q. What did you do then?

A. I had to hurry—I went in my own house and looking after my fire.

Q. You went back to your own house, which was standing just below the Koski house. This is your house here?     A. Yes.

Q. That was your house—all right. You went to your house, and did anything happen shortly after you got into your house?

A. I went upstairs. I had a big heater upstairs, then I went and closed the draft; then I came down and went down in my wash room; I had another heater down there, so I looked at that; then I went back upstairs again, and I was going to fix up my beds, but there was two or three men was sleeping

(Testimony of John Larson.)

so I thought I wait a little longer, so I came down and I went in my kitchen, and as soon as I got in my kitchen the slide came and took my house.

Q. You went into your kitchen? A. Yes.

Q. How did you get into this kitchen?

A. I opened the door.

Q. Where was the entrance to the kitchen?

A. That was on the south end of the building.

Q. And after you got into the kitchen the slide came down? A. The slide came down.

Q. Then what happened to you?

A. I went down the hill there.

Q. You went down with the house?

A. About 50 feet below the trestle.

Q. When you speak about the trestle you mean Gastineau Avenue? A. Yes.

Q. Standing on piles through there? A. Yes.

Q. All right,—you went through there, inside of the building? A. Yes. [88]

Q. Then you landed down—

A. I landed down on the floor—on the kitchen floor.

Q. Was any water coming through your house then? A. Yes, there was lots of water and mud.

Q. And you crawled out of there finally?

A. Yes; then a young man come and helped me up there.

Q. Now, about how much time elapsed, say, from the time that you saw the water back of the Koski house until the slide came—about?

A. About 25 minutes.



(Testimony of John Larson.)

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. When you had breakfast at the Koski house and saw the water the first time was about half-past nine, wasn't it? A. About 10 minutes to ten.

Q. Just a little before 10 o'clock?

A. Yes, just a little before ten.

Q. And the slide happened a little after 11 o'clock, wasn't it—a quarter after eleven?

A. About a quarter after eleven.

Q. That would be about an hour and 25 minutes, then, from the time you saw the first water until the slide?

A. An hour and 25 minutes, yes.

Q. How much water did you see coming over the bank there at that time, John,—very much?

A. Oh, quite a bit there.

Q. It was running all over that bank was it?

A. Yes.

Q. The whole bank where it had been cut in—the whole bank was covered more or less with water?

A. I didn't have much time to look,—I was kind of hurrying to get in my own house there. [89]

Q. That is your best recollection of it now,—that is the way it seems to you now, I mean?

A. Yes.

Q. That the whole cut there behind the house was water—water coming all over—that is right, isn't it?

(Testimony of John Larson.)

A. Well, I couldn't say water coming all over it, but coming close to where that slide was.

Q. And ran down on the sidewalk? A. Yes.

Q. And your recollection of it is about 10 minutes to ten?

A. That was the time I came out from Koski's house there.

Q. That is the time you saw it? A. Yes.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

**Testimony of Oscar Harri, for Plaintiff.**

OSCAR HARRI, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Direct Examination.**

(By Mr. RODEN.)

Q. Your name is Oscar Harri? A. Yes, sir.

Q. And you live in the town of Juneau?

A. I do.

Q. What is your business?

A. I am a sheet metal worker at C. W. Young Company.

Q. Were you in the employ of the C. W. Young Company on the 2d day of January, 1920?

A. Yes, sir.

Q. Now, that is the morning of the slide,—the day on which the slide happened? A. Yes. [90]

Q. That morning was your attention called to any water coming down the sidehill?

(Testimony of Oscar Harri.)

Mr. HELLENTHAL.—I object to this witness testifying—it is hearsay. In the previous trial that was admitted under a misapprehension. This witness can testify to what he saw, but not to what his attention was called to.

The COURT.—I think he may answer that question,—was his attention called to anything?

Mr. HELLENTHAL.—The trouble is that he did not go to see anything—that is what he testified to before.

The COURT.—I do not know whether he did or not.

Mr. HELLENTHAL.—That is his previous testimony,—I am judging by what he testified to before.

The COURT.—You know what that means, was your attention called? Did you see any water coming down the hill, that is what that means,—did you see any water coming down the hill? Do you understand the question?

The WITNESS.—I do, yes.

The COURT.—You may answer,—did you see any water, and if so, when and where?

A. I didn't see it the time my attention was called the first time—I didn't look.

Mr. HELLENTHAL.—I move the answer be stricken. The question, was your attention called, is hearsay.

The COURT.—I do not know whether he is going to pursue it any more or not. If he does you can object.

Q. That morning, Mr. Harri, did you see any

(Testimony of Oscar Harri.)

water coming down the sidehill back of the Koski house there?

A. I did, after the slide.

Q. How long after the slide?

A. Oh, it must have been two minutes after the slide,—the time the fire-truck got down there,—that is the first time—

Q. You saw the fire-truck pass the C. W. Young place, did you?

A. I didn't see it—I heard it. [91]

Q. Then what did you do?

A. My attention was called again about the slide—Mr. Fisher called my attention to it.

Q. And you stepped to the window then?

A. Yes, stepped to the window and looked.

Q. What did you see?

A. I seen the water running down, and I seen the slide had come down.

Q. Where did you see this water coming from?

A. Coming from the penstock that was up there.

Q. How much water did you see coming from that penstock?

A. It looked to me quite a stream—I couldn't tell exactly. The last time I said it was two or three feet wide—of course it spread some.

Q. Where did this water hit or come to with reference to where the slide happened?

A. Pretty near right straight on top, it looked to me, looking from a distance as I did.

Q. Now, who else saw that at that time, Mr. Harri?     A. Mr. Hanson—Ole Hanson.

(Testimony of Oscar Harri.)

Q. Anybody else?     A. Mr. Fisher.

Q. Where is Mr. Fisher now?

A. I don't know—back in the east, I guess.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. When you looked out, Mr. Harri, you saw quite a stream of water coming out of that spout, after the fire-truck had gone down towards the slide?     A. Yes, sir.

Q. That is right, isn't it?     A. Yes, sir.

Q. That is the first time you looked out of the window? [92]     A. Yes, sir.

Q. And that stream of water ran down the hill in the direction of where the slide happened?

A. The way it looked to me from looking from the shop.

Q. You couldn't follow the water on the hillside by looking, with your eye?

A. Not the distance I was.

Q. You only judge it was in that direction because that was the downhill way—the natural way for it to flow?     A. That is right.

Q. You could not see it from where you were?

A. I could see it for a distance.

Q. You could see it coming from the penstock, but after it got to the brush you couldn't tell where it went to?

A. It started to run through the brushes.

Q. And then you couldn't tell where it was?

(Testimony of Oscar Harri.)

A. I could see it running over to where the slide is.

Q. When you testified before didn't you testify that you could not see where the water ran to from where you were?

A. I don't think I did—I might.

Q. Didn't you testify there was brush on the hill and you couldn't see it except right on top—except from the penstock?

A. I don't believe that question was asked me, about the brush.

Q. Let's go into it now. The water came from that spout and ran down the hillside? A. It did.

Q. And you could see it for a short distance, following the spout? A. Yes.

Q. That is right, isn't it? A. Yes.

Q. And after that it ran into the brush and you couldn't tell where it went—that is right, isn't it?

A. Couldn't see it in the brush, no; where the water come through the brush again I could see it again. [93]

Q. Where did you see it then?

A. It ran where the slide was.

Q. Did you see the water where the slide had been? A. I did.

Q. Did you so testify before?

A. It wasn't asked.

Q. We will see about it. A. I don't remember.

Q. Didn't you testify before the water ran as far



(Testimony of Oscar Harri.)

as the stump and you lost sight of it when it got to that stump?

A. I don't believe I did say anything about a stump—I cannot remember.

Q. The time the fire-bell rang you were in the boiler, weren't you      A. No, sir.

Q. You didn't hear the fire-bell, did you?

A. I didn't hear the fire-bell, but I heard the fire-whistle.

Q. You heard the truck as it went up?

A. Yes, sir.

Q. That is the first you heard of it, and how long after the truck went by did you look out the window?

A. Right then and there—at the same time.

Q. Were you standing right at the window?

A. Pretty close.

Q. How close?

A. There was only a work-bench between me and the window.

Q. What were you doing?

A. I was making a gas-tank.

Q. You didn't have the gas-tank on the work-bench, did you?      A. No—right alongside of it.

Q. How near the top of where the slide broke loose did you see the water—could you see it?

A. On top of the slide.

Q. Yes, you saw where the slide broke loose, didn't you? [94]      A. I don't catch you.

Q. I say you saw where the slide broke loose on top there—could you see that?      A. Yes.

(Testimony of Oscar Harri.)

Q. How far above that could you see the water?

A. Not very far—the brush was pretty close there.

Q. The water above where the slide broke loose was taking a curve there down that ditch or trail, wasn't it. A. I don't know—I couldn't see that.

Q. But it would be 15 or 20 or 25 feet above where the slide broke loose where you could see the water at its lowermost point—is that right?

A. I couldn't give any distance—it is too far.

Q. I don't mean the exact distance, but about that.

A. It wasn't very far where the brushes was from it.

Q. It was all the way from 15 to 25 or 50 feet—maybe not so far—from the top of the slide where it broke loose to the lowermost place you could see the water? A. It was a little distance.

Q. And the water didn't come quite to the slide—that is, there was a distance of from 15 to 50 feet—

A. The water got to the slide, but before the brush—

Q. That is when you could see it, I am talking about. A. Yes.

Q. You couldn't see the water between the top of the slide and the place where you saw the water—say, maybe, 15 and maybe 50 feet—is that right?

A. Yes; I couldn't see the water in the brushes.

Q. Answer my question—that is right, isn't it?

A. Yes.

(Testimony of Oscar Harri.)

Q. I know you couldn't see it in the brush—that is true? A. Yes.

Q. There was a distance of maybe 15 to 25, 30 or 50 feet, maybe, from the top where the slide broke loose to the place you [95] saw the water at the lowest point, is that right?

A. There was a distance from where the slide broke loose to where the brushes are.

Q. I am asking you, not where the brush are, Mr. Harri—but there was a distance of from 15 to 25, or 30 or maybe 50, feet between the top of the slide and the place where you saw the water at its lowest point on the hillside—that is right, isn't it?

A. I don't know the distance—there was a little distance between them.

Q. There was some distance? A. Yes.

Q. I didn't ask you to say just what the distance was—there was a distance of from 15 to 50 feet—somewhere in there? A. Yes.

Q. That is right, isn't it? A. Yes.

Q. Now, you were a witness when this Koski case was tried, weren't you—the case of Koski against the Alaska Juneau Company? A. I was.

Q. You were sworn and testified in that case, weren't you? A. Yes.

Q. Now, listen to me. I will ask you if you did not testify in that case as follows: "You saw that water running down the hillside? A. Yes, sir. Q.

Did you see it running over that trail—following that trail down? A. I don't remember, no, sir.

Q. You don't remember where it went to? A. I

(Testimony of Oscar Harri.)

could see it was coming down that spout, or something. Q. That is all you could see? A. That was all, yes. Q. You don't know where the water ran? A. No; I was busy working and didn't pay any attention." Did you so testify?

A. I believe I did, yes.

Q. How is that? A. I think I did. [96]

Q. That was true, wasn't it? A. Sure.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [97]

### **Testimony of Ole Hanson, for Plaintiff.**

OLE HANSON, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

#### **Direct Examination.**

(By Mr. RODEN.)

Q. Your name is Ole Hanson? A. Yes, sir.

Q. Where do you live? A. In Juneau.

Q. What is your business?

A. Blacksmithing and carpenter.

Q. How long have you lived in the town of Juneau?

A. I have been here three years—two years and eight months.

Q. On the 2d of January, 1920, were you in the town of Juneau? A. Yes, sir.

Q. Where were you?

A. In the shop in C. W. Young's.

(Testimony of Ole Hanson.)

Q. You were working in the shop of C. W. Young and Company?     A. Yes, sir.

Q. Where is the shop located?

A. Down here on Ferry Way.

Q. Is that the same shop that Oscar Harri was working in?     A. Yes, sir.

Q. Was Oscar working there on the 2d day of January, in the morning?     A. Yes, sir.

Q. On the second day of January, in the morning, do you remember about when the slide happened?

A. Yes, sir.

Q. Where were you when the slide happened?

A. I was inside of a gas-tank.

Q. You were inside of a gas-tank?     A. Yes.

Q. In the shop?     A. Yes. [98]

Q. You were fixing a gas-tank inside?     A. Yes.

Q. That morning did you have occasion to go to the window of the shop?     A. Yes, sir.

Q. For what purpose?

A. I went there to open the window because it was too warm in there.

Q. It was too warm in the shop. Did you then look at the side hill?     A. Yes, sir.

Q. Did you see any water on the side hill above the Koski house?     A. Yes, sir.

Q. Where was the water coming from at that time?

A. It was coming from the end of the shack standing up there on the hill.

Q. When you say the shack what shack do you mean?

(Testimony of Ole Hanson.)

A. I don't know what you call it—the dry house, I think you call it, coming out of the flume—the water was coming out of there.

Q. It was at the end of the flume? A. Yes, sir.

Q. Was it what we have called here the penstock?

A. Yes, it was the penstock.

Q. How much water was coming out of there?

A. It was in my judgment between two and three feet wide.

Q. A stream two or three feet wide—of course you cannot tell how deep that water was?

A. No.

Q. What time of the morning was it that you saw this water coming out at the time you opened the window? A. About 5 minutes after ten.

Q. How do you know it was that time?

A. I was downstairs after rivets—we were starting to rivet a tank—and I looked at the clock in the office. [99]

Q. And you were downstairs after rivets?

A. Yes.

Q. And you took a look at the clock? A. Yes.

Q. And you went up and looked out of the window and saw the water coming down the hill?

A. Yes.

Q. Whereabouts was it hitting?

A. It was hitting down here through the brush—I see it on top of where the slide started, and on top of that stump that is standing there yet.

Q. I show you Plaintiff's Exhibit "N" and ask you to point out the stump you are speaking about.



(Testimony of Ole Hanson.)

A. That stump right here.

Q. Show that to the jury.

A. Coming right alongside of that stump, on the high-hand side here.

Q. Show them the place where the water was coming from.

A. Coming out here from the end of the shack and coming down the hill here.

Q. And you saw that about 10 o'clock?

A. Yes.

Q. What did you do after you opened the window and saw that stream of water?

A. I told Oscar Harri that was an awful big stream of water coming down the hill.

Q. Don't tell what you said. Did you go back to your work? A. Yes, sir.

Q. Did you again look out of that window that morning?

A. No, not until after the fire-bell rang and Mr. Fisher came up.

Q. And then you looked out of the window again?

A. Yes.

Q. You heard the fire-bell ring?

A. No, I didn't hear the fire-bell ring. [100]

Q. What did you hear?

A. Mr. Fisher came up and asked where the fire was, and he looked out of the window, and Oscar Harri came over to the window, and I looked out, too, and we saw the slide and the houses and the whole thing were down the hill.

Q. Did you hear the fire-truck go by?

(Testimony of Ole Hanson.)

A. Yes, the fire-truck came and stopped there.

Q. Stopped where? A. On Front Street.

Q. Stopped on Front Street below the slide?

A. Yes.

Q. When you looked out of the window at that time did you see any water?

A. Yes, the water was still coming then.

Q. Where was that water coming from?

A. From the same place, the end of the shack, coming down.

Q. Did you see this water running over the slide area then?

A. Yes, it was running over the slide then—the slide was going down.

Q. How big was this volume of water compared to the volume you had seen before?

A. It was the same thing—it was a little bigger if it was anything.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. That was about what time in the morning when you first looked out of the window?

A. Five minutes after ten.

Q. Now, how long did you look out of the window at that time?

A. A couple of minutes, maybe—a minute or two—a couple of minutes—something like that.

Q. And at that time you say you saw water coming from the shack? [101]

(Testimony of Ole Hanson.)

A. Yes, from the end of the shack there.

Q. That little shack?      A. Yes.

Q. Did you see any water coming from any place else there?

A. No, I wasn't paying any attention to anything else there.

Q. I didn't ask you whether you were paying attention to anything else—did you see any water coming from any place else except that one place?

A. No, I didn't look at any other place.

Q. The only water you cared about was the water that came from the penstock?

A. Yes—that was all the water I looked at.

Q. You didn't see water coming from the roof of the snowshed just near the penstock?

A. No, I didn't pay attention to it.

Q. You didn't see it, did you?      A. No.

Q. You only saw one stream of water?

A. Yes.

Q. That is all you saw?      A. That is all I saw.

Q. And you looked a couple of minutes?

A. Yes.

Q. And you looked at it through the brush?

A. I looked at it and I could see it some places through the brush—it come down hill there.

Q. You had to look through the brush to see it from where you were?

A. There was open places; you could see the water from the place I looked.

Q. But generally speaking the water you saw, you had to look through the brush to see it?

(Testimony of Ole Hanson.)

A. Yes, sir.

Q. There were a lot of young trees and small brush between you and the place where the water was? A. Yes. [102]

Q. Now, when you say you saw that water on the slide when you looked out the second time, you don't mean to say you traced it all the way down to where the slide was? A. No.

Q. You didn't see the water right above the slide, did you? A. Yes, I saw it right above the slide.

Q. You saw it a little ways above the slide?

A. Yes.

Q. About 15, 20 or 25 feet above the slide was the last place you could see the water, wasn't it?

A. Yes, something like that—maybe a little more.

Q. There was a space between the place where it broke loose and the place you saw the water of about 15, 20 or 25 feet, maybe a little more? A. Yes.

Q. That is the time you looked out the second time? A. Yes.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [103]

### **Testimony of Ambrose Hyle, for Plaintiff.**

AMBROSE HYLE, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

#### **Direct Examination.**

(By Mr. RODEN.)

Q. What is your full name? A. Ambrose Hyle.

(Testimony of Ambrose Hyle.)

Q. What is your business?

A. Driving team for the Juneau Transfer.

Q. Do you live in the town of Juneau, Mr. Hyle?

A. Yes, sir.

Q. How long have you lived here?

A. Twenty-three years.

Q. Were you here on the 2d day of January, 1920, at the time of the slide?     A. Yes, sir.

Q. Where were you at the time of the slide, Mr. Hyle?

A. At the time of the slide I was at the office.

Q. You were at the office of the Juneau Transfer Company?     A. Yes.

Q. Prior to this time—that is, prior to the slide were you down on the Pacific Coast dock at any time?     A. Yes, sir; about 10 o'clock.

Q. About 10 o'clock that morning?

A. Yes, sir.

Q. What were you doing down there, Mr. Hyle?

A. Loading freight.

Q. Did you have occasion at that time, or about that time, to look up on the sidehill in the direction of the Alaska Juneau penstock?     A. Yes, sir.

Q. Did you see any water up there anywhere at that time?

A. Yes, sir; there was quite a head running there.

Q. Where was this water coming from, Mr. Hyle?

[104]

A. The spillway at the end of the—

Q. The spillway at the end of the penstock there?

A. Yes.

(Testimony of Ambrose Hyle.)

Q. Can you give us an estimate as to how much water you saw coming out of the spillway?

A. There was quite a head—two or three foot wide—I don't know how deep it was.

Q. Where was this water going to—where was it running to?

A. I just took notice of it dropping there on the ground—I did not see where it went to.

Q. You paid no further attention to it after that?

A. No.

Q. Did you go down to the slide area after it happened?

A. Yes, sir; I drove down after it happened.

Q. How long after the slide happened was it that you went down there?

A. Oh, right away—that is, after the fire-bell rang.

Q. Can you give us any idea as to about how long?

A. It would take me maybe five minutes.

Q. You went down there as fast as you could from the transfer office? A. Yes, sir.

Q. That is Bill Casey's transfer office?

A. Yes, sir, I went down with the team.

Q. When you got down there did you see any water coming down?

A. We were on the truck—I wasn't looking up the hill.

Q. I mean did you see any water coming down over the slide area at that time?

A. They hollered to me there was another slide



(Testimony of Ambrose Hyle.)

coming and for me to get out, so I turned my team around and come back up.

Q. You paid no attention to anything up there at that time?     A. No, not at that time.

Q. And you saw this water coming out of the spillway or penstock about how long before the slide?

A. It was somewhere about 10 o'clock—I couldn't tell exact. [105]

Q. And that was practically an hour or an hour and a half before the slide happened?

A. Something like an hour or so. I delivered my load and got back there to the office and was there a few minutes when the fire-bell rang.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. I think you testified before that you did not see any water coming over the snowsheds that morning?

A. I didn't take notice of any,—I saw water in the gullies all along the hill.

Q. But you saw no water coming over the snowshed in the neighborhood of the penstock?

A. I didn't take notice of any.

Q. I mean you don't remember seeing it?

A. I don't remember seeing it.

Q. And you only saw one stream of water coming from that level of the flume line?

A. That end of the chute—there was quite a big stream.

(Testimony of Ambrose Hyle.)

Q. Listen—I am asking you if you saw more than one stream coming from that same level,—you only saw one stream? A. One from that chute end.

Q. You only saw one, is that right?

A. I saw more water coming down the mountain.

Q. I know, down in the gulches you saw it?

A. Yes, sir.

Q. It was a rainy day and the water was in the gulches; that is right, isn't it? A. Yes.

Q. But you saw only one stream coming from the company's flume line, I mean, at that level?

A. From the chute—there was one stream coming from there. [106]

Q. You didn't see any stream coming over the snowshed?

A. I didn't take notice whether there was or not.

Q. Did you see one, or not?

A. No, I didn't take notice.

Mr. HELLENTHAL.—That is all.

Q. (By Mr. RODEN.) The stream you did see came from the chute?

A. The chute at the end of the bulkhead there—the penstock.

Mr. RODEN.—That is all.

(Witness excused.) [107]

**Testimony of William J. Maynard, for Plaintiff.**

WILLIAM J. MAYNARD, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(Testimony of William J. Maynard.)

Direct Examination.

(By Mr. RODEN.)

Q. What is your full name?

A. William J. Maynard.

Q. What is your business?      A. Teamster.

Q. Whose employ are you in at the present time?

A. Femmer & Ritter.

Q. How long have you been in their employ?

A. *Growing* on three years.

Q. Were you in the town of Juneau on the 2d day of January, 1920?      A. I was.

Q. Were you engaged in the teaming business then?      A. I was.

Q. What did you do on the morning of the 2d?

A. Why, I delivered different orders around town,—not very many that morning.

Q. Were you on the Femmer & Ritter dock at any time that morning?      A. I was.

Q. What time were you down there?

A. I was down there the forenoon—practically all forenoon, as near as I can remember. I think I only made three trips out. The last trip I made out was to the Case rooming-house.

Q. That morning, do you remember about when the slide happened?      A. I do.

Q. Where were you when the slide occurred?

A. When the slide occurred I was coming off the Femmer & Ritter dock, just turning the corner at Tom Knudsen's place, just hitting out on to the road, when the slide occurred.

Q. Prior to this had you had occasion to look up

(Testimony of William J. Maynard.)

on the hillside in the vicinity of the Alaska Juneau penstock? [108] A. I did that morning.

Q. What did you see there?

A. I saw water coming down.

Q. Where was that water coming from?

A. From the top of the hill—I should judge about where the flume is.

Q. Where did the water go to?

A. It came downhill.

Q. Could you see where this water originated?

A. I could see that there was a stream of water coming down there—it must have come from some place, from a flume or somewhere. It would be impossible to my notion for a stream of water like that—

Mr. HELLENTHAL.—Never mind—you testify to what you saw—not what you think about it.

A. I seen a big stream of water coming down the hill.

Q. But you couldn't tell exactly where that stream was coming from?

A. No, sir, not exactly—I could see where it started from.

Q. Where did it start from?

A. It started from what I call the flume.

Q. Whose flume?

A. The Alaska Juneau Company's.

Q. How big was this stream of water?

A. To my estimation the stream of water, when I first saw it, was a very small stream, about half-

(Testimony of William J. Maynard.)

past nine—it was larger about 10 o'clock—it was quite a bit larger.

Q. After you saw this stream of water you attended to your business?

A. I called another man's attention to it.

Q. It is not admissible, what you told the other man—we will not talk about that. At the time this slide occurred you say you were just driving off the dock and turning the corner at Tom Knudsen's place? A. Yes, sir.

Q. Could you see the slide area from there? [109]

A. Yes, sir.

Q. Could you see any water coming from the slide area—over the slide area at that time?

A. Not at that time, but when I got to C. W. Young's I could see the water coming down.

Q. Where was this water coming down?

A. It was coming down about the middle of where the slide occurred.

Q. Where was this water with reference to where you had seen the water an hour before?

A. Some of it was coming to the brow of the hill, and some of it was coming down to the right of the slide, coming down the gully.

Mr. RODEN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Some of the water was running down into the gulch, and some was running over the top?

A. Yes, sir.

(Testimony of William J. Maynard.)

Q. And you first saw the slide,—you heard the slide, I suppose, didn't you?   A. No, sir.

Q. Then the slide was over when you first looked at it?   A. No, sir.

Q. What drew your attention to it, that is what I am trying to get at?   A. I see it slide.

Q. The houses were coming down when you looked over there?

A. The houses had gone,—I could just see the back part of the slide—the houses had already settled; there was some rocks and some mud coming down. I only just see the tail-end of the slide because I just come around the corner of the building.

Q. At that time you could not see any water coming over the top? [110]   A. Not just then.

Q. Then you drove around and drove towards the slide?

A. I drove towards the slide as fast as I could drive.

Q. When you got downtown—where were you when you looked at it again?

A. At C. W. Young's, at the corner.

Q. And then you saw the water coming over the top?   A. I saw the water coming over the top.

Q. And the water you saw in the morning, you remember there was a stream of water coming from the Alaska Juneau flume, but you don't know what point in the flume? .

A. Yes, sir, I do; I know the point where it came from.



(Testimony of William J. Maynard.)

Q. It came from the Alaska Juneau flume, at that level?     A. Yes, sir.

Q. You wouldn't say within 50 or 60 feet where it was coming from?     A. Yes, sir, I would.

Q. How many feet was it from the portal of the tunnel?

A. From the portal of the tunnel—you mean where the tunnel comes out of the ground?

Q. Yes.

A. I should judge in the neighborhood, not over 15 feet, to the best of my ability.

Q. About 15 feet from where the old portal, the portal on the hillside there comes out of the ground—about 15 feet from there is where you saw that water running?     A. I should judge.

Q. And you only saw one stream of water?

A. Only saw one stream of water.

Q. And no more?     A. And no more.

Mr. HELLENTHAL.—That is all. [111]

Redirect Examination.

(By Mr. RODEN.)

Q. This stream of water, was there a little building it seemed to come from?

A. There seemed to be a little building or a box of some kind there.

Q. I show you Plaintiff's Exhibit "N," and ask you to point out where this water was coming from.

A. Right about here.

Q. Show it to the jury.     A. Right about there.

Mr. RODEN.—That is all.

(Testimony of H. P. Crowther.)

(Witness excused.) [112]

Mr. RODEN.—It has been agreed that the testimony of Mr. Crowther given at the last trial may be read into the record.

Mr. HELLENTHAL.—That is agreeable, your Honor.

Mr. RODEN.—It is understood, then, that if Mr. Crowther were here to testify he would testify as follows.

Mr. HELLENTHAL.—The whole thing goes in the record, objections and all. There is no use of reading the objections now—the Court has already passed on them in the other case.

Mr. RODEN.—Can it not be agreed that the record goes in the same as it appears in the transcript here?

Mr. HELLENTHAL.—Yes,—that is, the entire transcript?

Mr. RODEN.—Yes.

(Whereupon the testimony of H. P. Crowther was read in evidence as follows:) [113]

**Testimony of H. P. Crowther, for Plaintiff.**

H. P. CROWTHER, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RUSTGARD.)

Q. State your name. A. H. P. Crowther.

Q. What is your occupation, Mr. Crowther?

(Testimony of H. P. Crowther.)

A. Civil engineer.

Q. How long have you followed that profession?

A. Practically for the last 18 years—part of the time at other work, though, than civil engineering.

Q. Where were you educated?

A. In Liverpool University, England.

Q. Does it come within the scope of your education as an engineer to study hydraulics and questions connected therewith?     A. Yes, sir.

Q. How long have you been in Alaska?

A. Since August, 1905.

Q. And most of that time in the neighborhood of Juneau?

A. The first seven years of that time I worked for the Perseverance Company exclusively; since that time I have been all over Alaska.

Q. During your professional career, aside from your theoretical studies, have you had any opportunity to become acquainted with ditches and flumes and hydraulic works?     A. Yes, sir.

Q. Will you give the Court and jury a general idea of what practical experience you have had along that line, including what you have observed from others?

A. The first work that I ever did in connection with hydraulic engineering was in Montana in 1903. At that time I was working for one of the power companies there. I did a lot of surveying of the ditch lines and flume lines, computations on [114] pipe-lines, and so on. After I came to Alaska I designed and superintended the construction of some

(Testimony of H. P. Crowther.)

of the flume work for the Gastineau Company, or the Perseverance Company, as it then was; and at intervals since then I have worked on the same class of work whenever a demand has been made for my services in that connection,—particularly in connection with water power permits for the Forest Service—that is, the United States Forest Service, in compliance with the requirements and the regulations of that service.

Q. You are acquainted with what is known as penstocks, their uses and purposes, in connection with the handling of water? A. Yes, sir.

Q. What are the purposes of penstocks?

A. Well, the term penstock as it has been used in this case is a particular kind of penstock. The engineering term “penstock” means other things besides this small reservoir which we have got in this case.

Q. Confine it to penstocks of the character connected with this work.

A. The object of a penstock at the terminus of a flume is to insure regularity of flow of water into the service pipe which drains the penstock. It is simply an equalizing reservoir to prevent fluctuations of water in the pipe-line taking the water away from the box or reservoir.

Q. A penstock is sort of a temporary impounding of the water before it enters the service pipe?

A. Yes; it is an enlargement of the end of the flume,—it has greater lineal dimensions than the flume, and is generally deeper, the object of giving

(Testimony of H. P. Crowther.)

it the greater depth being to prevent air being taken in through a vortex at the orifice of the pipe, thereby causing a fluctuation of pressure in the pipe.

Q. The aim, then, is to keep more water in the penstock than the service pipe is able to carry away—that is to say, have sort of a reserve in the penstock? [115]

Mr. HELLENTHAL.—Just a minute—do I understand the witness to be testifying as to what the conditions were at this penstock or an ideal penstock? Which is it he has in mind?

Mr. RUSTGARD.—The question is in regard to the purpose of penstocks of this character and for the purpose here in question.

Mr. HELLENTHAL.—I do not think the witness has testified that he knows what the character of this penstock was.

The COURT.—I understood the witness to testify that the purpose of a penstock is what he has just been describing—to keep the air out of the pipe and secure uniform pressure. I did not understand him to be talking about this penstock particularly.

Mr. RUSTGARD.—Penstocks generally.

Mr. HELLENTHAL.—That is all right—penstocks generally.

A. Yes; it acts as a small reservoir to smooth out momentary fluctuations in the flow.

Q. There has been evidence introduced here to show that the water is being used in a mill here for reducing ore—I will ask you, Mr. Crowther, whether



(Testimony of H. P. Crowther.)

you are acquainted with the general character of that mill?     A. I am.

Q. You have been through it several times?

A. I have.

Q. Is it of any importance in that mill to keep a regularity of the pressure?     A. It is.

Q. In what way?

A. A considerable part of the water which is used in a metallurgical process such as takes place in this particular mill is dependent entirely on the regularity of the pressure. There are a number of small jets which feed on to the shaking tables. If any change takes place in the pressure of the water supplying those jets the process of concentration on those tables is interfered with. The load of water, and the load of [116] material on the table, and the speed of the shake of the table are the determining factors in its efficiency, and all three of those things must be kept uniform as nearly as possible.

Q. You have heard, I believe, all of the evidence in this case, have you not, Mr. Crowther?

A. Yes, sir.

Q. And you have heard evidence to the effect that water flowed from this penstock through the spout referred to upon the ground and downhill. I wish to have you state whether there was any ready and expedient and practical way of preventing any overflow water from doing any damage on the hillside in the event of an overflow?

Mr. HELLENTHAL.—I object to that,—it is a



(Testimony of H. P. Crowther.)

simple charge of negligence stated in the bill of particulars and does not include the matters contained in counsel's question. The particular charge of negligence is that there was not sufficient service pipe to carry away the water of the penstock.

The COURT.—My recollection is that one of the allegations is that you did not have any spillway.

Mr. HELLENTHAL.—The charge is, first, that the service pipe was not large enough, and not being large enough of course a spillway was necessary in the flume; but there has been no proof yet that the service pipe was not large enough. Until that proof comes, of course there was no necessity for a spillway in the flume—one is dependent upon the other.

Mr. RUSTGARD.—It is an easy matter to dispose of by looking at the bill of particulars. After our allegation in paragraph No. 2, I make the further allegation that they were negligent in not providing a waste flume to carry away any waste water which for any cause whatsoever might overflow the flume or the penstock. Now I call the witness' special attention to the question of whether or not it was negligence to fail to provide a waste flume, and my question is directing his attention [117] to that feature of it, and that is specially alleged as one of the items of negligence, failure to provide a waste flume by which overflowing water would be carried to a safe place where it would not do any damage, no matter for what reason it overflowed.

(Testimony of H. P. Crowther.)

Mr. HELLENTHAL.—Until there is evidence of overflow, as alleged in the bill of particulars, it becomes absolutely immaterial whether there is a waste flume or not. There has been no such evidence—there has been no evidence that water came from the spout, and no evidence that there was an overflow of that penstock. He says the water could not be carried away by the service pipe, but there is no such evidence.

The COURT.—The crux of the matter is whether or not the overflow, no matter from what it was caused, could have been taken care of.

Mr. HELLENTHAL.—Your Honor is right about that, but the point I was reaching was this, that there is no evidence that there was an overflow.

The COURT.—There is some evidence that the water came from the penstock—it is a question for the jury.

Mr. HELLENTHAL.—The evidence does not show that the water that overflowed was in the penstock, much less an overflow from the penstock.

The COURT.—Oh, yes, Mr. Hellenthal; one witness testified to that and you tried to get him to state definitely whether or not the water he saw was not snow water coming over the snowshed. I think there is enough evidence to lay a foundation for the question.

(Whereupon the question was read to the witness as follows:)

(Testimony of H. P. Crowther.)

Q. You have heard evidence to the effect that water flowed from this penstock through the spout referred to upon the ground and down hill. I wish you would state whether there was any ready and expedient and practical way of preventing any overflow water from doing any damage on the hillside in the event of an overflow? [118]

A. Yes, there was.

Q. What would that be?

Mr. HELLENTHAL.—I object to that as immaterial, all the way through.

A. Provide a wooden box or pipe of some description to carry that water down the hillside to a point below where it might cause any damage.

Q. To have a closed box or pipe to convey the water to a safe place? A. Yes.

Q. An ordinary sewer box would do for that, wouldn't it? A. Perfectly well.

Q. Would that be any great engineering feat to have any such thing?

A. It would not; and the dimensions of that box would be considerably smaller than the flume because the carrying capacity would be considerable greater. Any small box on a steep grade would be considerably larger than a large flume on a flat grade.

Q. State whether or not ordinary careful engineering of handling this water would require the installation of such a box?

A. In my opinion it would.

Mr. HELLENTHAL.—I object to that because

(Testimony of H. P. Crowther.)

the facts with reference to the conditions of this penstock are not even before the Court, or before the witness to answer a hypothetical question.

The COURT.—Objection overruled.

Q. Let us ask you, Mr. Crowther, whether or not you think that just a little care and caution on the part of the men in charge of this water would have suggested the installation of such a box?

Mr. HELLENTHAL.—Your Honor, I object to that.

The COURT.—I think that is argumentative, Mr. Rustgard.

Q. Let me ask you, Mr. Crowther, whether or not you think that the failure to make such provision for an overflow, for one reason or another, was gross negligence?

Mr. HELLENTHAL.—I object to that—that is a question of law. [119]

The COURT.—Do you want to win your case and then lose it in the upper court, by asking what in his opinion is negligence?

Mr. RUSTGARD.—I asked him whether or not in his opinion he considered that gross negligence.

The COURT.—A witness, expert or not expert, cannot testify to what is negligence or what is not negligence. He can testify to what is the proper way to do a thing and what results follow, and what a thing may indicate to him, but he cannot testify to what is negligence. It is for the jury to say what is negligence and what is not negligence.

Q. Mr. Crowther, you are acquainted with the

(Testimony of H. P. Crowther.)

hillside where this slide took place?     A. I am.

Q. And you are acquainted with the character of the soil and the grade of the slope?

A. In a general way. I have never made any specific examination of the slide at that particular point beyond a casual observation.

Q. You know in a general way the composition of the soil there—the ground?

A. Yes; just as I do the locality of ground when I would be traveling over it.

Q. You have heard the testimony of the witnesses as to the character of the soil and the ground, whatever testimony has been introduced on that point?     A. I have.

Q. State whether or not under certain conditions water deposited upon the ground, of the character and slope here in question, a slide would be caused?

Mr. HELLENTHAL.—We object to that. That is a question for a geologist and not a civil engineer. Furthermore, it does not define the conditions.

The COURT.—The question simply means whether or not water deposited on there ever would, under any circumstances, cause a slide—is that what you mean? [120]

Mr. RUSTGARD.—That is practically it, your Honor.

The COURT.—Very well,—if he can answer that question he may.

The WITNESS.—I would say yes.

Q. What are the conditions under which water



(Testimony of H. P. Crowther.)

would cause a slide of ground of the character stated,—as the ground here in question?

Mr. HELLENTHAL.—I object to that because the witness is not qualified to answer,—is not qualified as a geologist.

The COURT.—Objection overruled.

Mr. HELLENTHAL.—Exception.

A. If a sufficient quantity of water were added to the soil, to the point where the soil became saturated or supersaturated, it naturally would tend to slide—in other words, the material would seek a flatter angle of repose on account of the admixture of water making the soil more fluid—finally get the soil into a mushy condition if you had sufficient water.

Q. And it is that process of the ground in seeking a flatter angle of repose that would cause the slide?     A. Yes.

Q. Now, let me ask you again. If the ground is saturated with water will or will not the weight of additional water have any tendency either to produce or avert a slide?

Mr. HELLENTHAL.—I object to that because the witness is not qualified to answer. This is a matter of expert testimony upon which the witness is not qualified to speak.

The COURT.—I think you ought to qualify him, Mr. Rustgard, a little more—what he knows about slides—what he knows about slopes and angles of repose—whether or not those things come within the scope of his experience.



(Testimony of H. P. Crowther.)

Mr. RUSTGARD.—I will do that, your Honor, but I want to make a very frank statement to the Court before I do. I think all these things are matters of common sense, and when I offer expert testimony it is simply in the superabundance of precaution. [121]

The COURT.—If you think they are matters of common sense and common observation, then expert testimony is not admissible.

Mr. RUSTGARD.—We will offer expert testimony, nevertheless, your Honor.

Q. How many years did you say you had lived in this neighborhood, Mr. Crowther?

A. I made my home in Juneau from 1905 to 1918.

Q. Well, now, during the time you have lived in this neighborhood have you had occasion to observe the action of water upon ground of this character and on slopes of this character?

A. Yes; particularly in connection with road work,—on the Basin road, where I had charge of the repairs on that road at different times extending over months at a time.

Q. Well, let me ask you, too, the study of and observation of the effect of water upon slides, with reference to the conditions under which slides may be produced or would be produced, is that or is it not a part of the study of your profession as an engineer and surveyor?

A. Yes; it is a thing that you come up against

(Testimony of H. P. Crowther.)

every day in practical experience in my line of business.

Mr. RUSTGARD.—Now, then, I submit the same question.

Q. If the ground is saturated with water will or will not the weight of additional water have any tendency either to produce or avert a slide?

Mr. HELLENTHAL.—I make the same objection,—the witness is not qualified to testify on the expert question.

The COURT.—Overruled.

A. It would.

Q. It would have a tendency to do what?

A. Cause a slide.

Q. State whether or not in your opinion the slide here in question was caused by anything but the action of the water deposited upon the ground?

Mr. HELLENTHAL.—I object to that question on the ground that [122] the witness is not qualified or competent to speak—he neither saw the slide, nor from the testimony present before the Court, in view of all the circumstances—

The COURT.—I think, Mr. Rustgard, that all this witness could testify to, or that an expert witness could testify to, about the cause of a thing, is not what actually did cause it, but what might cause it,—then it is for the jury to say whether those things did cause it.

Mr. RUSTGARD.—Well, he has testified that he has heard all of the evidence in this case. Then after he testified to the conditions under which a

(Testimony of H. P. Crowther.)

slide would be caused, then I asked him not whether or not water from the penstock caused it, but I asked him the simple question whether or not water, no matter where it came from, was the cause of this slide. I did not confine my question to any particular water, because that is a question for the jury.

The COURT.—I think he may answer it.

A. In my opinion the admixture of water with the soil was the cause.

Q. Of the slide?      A. Of the slide.

Mr. RUSTGARD.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Crowther, I think you testified that the reason the soil laid in a particular position and occupied the position on the hillside,—if you did not so testify I will ask you if it isn't so,—was because it had reached its proper angle of repose at that point,—that is so, isn't it?

A. Will you ask that question again?

Q. I will state it in a shorter way. Is it not true that the reason the soil occupies any given particular position on the side of a mountain is because it has reached its natural angle of repose?  
[123]

A. Well, Mr. Hellenthal, the angle of repose of any given soil is not a fixed angle unless you fix the quantity of water because the quantity of water which is mixed with the soil is the determining factor in settling the particular angle that it will take.

(Testimony of H. P. Crowther.)

If you wish to make your hypothetical question general, it is unanswerable. If you say, will the soil hold at a certain angle provided it is not super-saturated, yes.

Q. You cannot answer my question, then, Mr. Crowther,—is that right?

A. No; and nobody else can.

Q. We will try that again after while—never mind you telling me what somebody else can do. Your knowledge of geology consists of what you have observed as a surveyor, does it not?

A. No, not entirely. I studied geology.

Q. What book on geology did you study?

A. I cannot tell you now any text-books on geology that I studied. I graduated in 1886.

Q. Can you tell me the name of any text-book that has been written in the last few years?

A. Yes, sir.

Q. What?

A. Sir Charles Lysle—his text-book on geology is the standard text-book.

Q. Lysle was a Scotchman that wrote on geology long, long years ago, wasn't he? A. Yes.

Q. And he didn't deal with any such subject as soil or earth deposits, did he?

A. I would hesitate to answer that question because my memory is not good enough after this number of years to answer your question.

Q. Tell me the name of some modern author on geology that you have studied.

A. As I told you, I have studied no text-book

(Testimony of H. P. Crowther.)

on geology since I graduated. [124]

Q. What did you study while you were at school—what book? A. I cannot tell you now.

Q. Who was your professor in geology?

A. I do not claim to be a geologist.

Q. You don't know much about geology then, Mr. Crowther?

A. No, I didn't. I do not set up as an expert along geologic lines.

Q. And all you mean to testify to is if you have a deposit of earth on a sidehill and add weight enough to it by adding water to it it will have a tendency to cause it to slide downhill?

A. That is quite true.

Q. And you would not testify to that, would you, unless there was some place for it to slide to?

A. When you say that it is on a hillside there is naturally some chance for it to slide unless it is already at the foot of the hill.

Q. Is it not true that where soil has become formed by the action of the elements and it is at its natural angle of repose, with its subjacent support intact, that it requires a great deal of weight and a great deal of natural action to cause it to slide?

A. Yes, I think that is a fair statement.

Q. It will not slide under those circumstances until something has been done at the bottom that will permit it to give way,—isn't that the situation?

A. No; as I stated already, Mr. Hellenthal, I think that where you add a considerable quantity



(Testimony of H. P. Crowther.)

of water to soil which is occupying a fixed position on a hillside, that you may change the angle of repose—

Q. Make it heavier?

A. No; you make it less—you thin it out—instead of being a stiff earthy mixture you may thin it out until it assumes a mushy state.

Q. You make it more liquid, you mean?

A. Yes, more of a fluid. [125]

Q. And as it becomes more liquid it will flow easier?

A. Exactly, and then it will take a flatter angle of repose.

Q. But that does not occur until the mass has become so liquid as to flow—is that not true?

A. It will become thinner—I do not know as you would say it would become liquid.

Q. Now, Mr. Crowther, where the soil has been cut away on a hillside—that is to say, if the subjacent support has been taken away from a soil mass on a hillside, that will cause it to slide, will it not? A. It will have that tendency certainly.

Q. That is the way you cause soil to slide when you want it to slide, isn't it?

A. Yes; in hydraulic mining that is customary.

Q. You go to work and cut the toe off?

A. Yes.

Q. Take the support away and down it comes—isn't that the idea? A. Yes.

Q. That is the way you always do in hydraulic mining? A. You would under-cut it.



(Testimony of H. P. Crowther.)

Q. And when you undercut a mass of earth on a hillside you are creating a condition which will slide? A. It would have that tendency.

Q. It may stand it and it may not, but that is the way you would start it to slide, isn't it?

A. Yes.

Q. If you were going to start a slide on the hillside you would make a cut, wouldn't you?

A. Yes.

Q. Make a place for it to slide to, wouldn't you?

A. That is true.

Q. And if in this case a cut has been made immediately below the ground, that would have a tendency to cause the ground to slide, wouldn't it?  
[126]

A. It certainly would.

Q. And if in addition to that the ground were covered with snow and the rain fell on that for two or three days, that would have a tendency to saturate it, wouldn't it? A. It would.

Q. The fact that the snow were lying loose upon the ground would prevent the water from running away and cause it all to go in—wouldn't it have a tendency to do that?

A. Well, I think perhaps it would.

Q. It would stop the runoff, in other words?

A. It would tend to check it, yes.

Q. And have a soaking effect? A. Yes.

Q. If that condition existed in this case, that would have a tendency to cause the slide, would it not?

(Testimony of H. P. Crowther.)

A. It would have a tendency to cause a slide.

Q. Now, Mr. Crowther, returning now to the penstock, you don't know much about this particular penstock, do you?

A. No, sir; I don't think I have ever seen this particular one except in these photographs.

Q. You don't know anything about the use that this particular penstock was put to?

A. Not beyond what I—

Q. Beyond that it is a penstock?

A. Yes; and what I have heard about it in this case.

Q. Now, you testified that penstocks generally were employed to keep the air out of the water that went into the service pipe?

A. That, in my opinion, is one of the principal functions of it.

Q. Now, in this case if it should develop from the evidence that the service pipe had a much greater carrying capacity than the flume emptying into the penstock, then this penstock would not serve that kind of a purpose, would it?

A. No; provided you assume that the flow of water through your service pipe that is run off from the penstock— [127]

Q. Provided you assume the service pipe was open?

A. Fully open, yes; and assuming also the truth of your statement that its capacity was greater than the flume.

Q. Exactly. Assuming that the service pipe was

(Testimony of H. P. Crowther.)

open and the carrying capacity of the service pipe was greater than the capacity of the flume, it would not have any such purpose as you have testified to?   A. No, it would not.

Q. It would merely serve as a funnel, isn't that right?

A. It would merely be a part of the flume to all practical purposes.

Q. It would serve as a funnel, wouldn't it?

A. No, I wouldn't say that it would.

Q. It would serve as a funnel?

A. No, I don't think that it would.

Q. Well, the water would flow from the flume into the penstock and from that into the service pipe, would it not?   A. Yes.

Q. There would be a continuous flow?

A. Yes, more or less so.

Q. There would be no use for a spillway at the penstock,—it would merely be a case of a device for keeping up a continuous flow—is that not right?

A. That is what I have stated. I stated a penstock is a device for maintaining a continuous flow—equalizing the flow.

Q. Yes, equalizing the flow, but let us go a little further. Now assuming that this penstock is as I have indicated, that is to say, that the service pipe flowing from the penstock has a greater capacity than the flume, and the service pipe is kept open so that the flow is continuous, there would be no occasion for an overflow arrangement at the penstock, would there?

(Testimony of H. P. Crowther.)

A. No; provided that your use of the term open means 100 per cent apertion in your service pipe.  
[128]

Q. Yes, exactly—that is what I mean. I am assuming that the carrying capacity of the service pipe is larger than the carrying capacity of the flume, and that the service pipe is not obstructed—that it is entirely open, there would not, under those circumstances, be any occasion for an overflow at the penstock, would there?

A. No, there would not.

Q. You indicated to the Court, I think, that one reason why a penstock, generally speaking,—not speaking of this particular penstock, was used for storing water was to get a steady flow where the water was employed in a mill?

A. To prevent fluctuations in the service pipe.

Q. You have been in the Alaska Juneau mill, haven't you?      A. I have.

Q. Don't you know there is a large tank in the mill which is for that purpose, or don't you know that?

A. There is a large tank in the southeast part of the building that I looked upon as being a wash water tank.

Q. If the Alaska Juneau has a large tank into which the water comes from the service pipe, that tank would serve the purpose that you indicated penstocks generally are used to serve, wouldn't it?

A. Yes, it would—that would act as a local reservoir.

(Testimony of H. P. Crowther.)

Q. Yes, a reservoir, and there would be no need of storing water in the penstock? A. No.

Q. And the penstock could be kept open as I indicated this one was—that is correct, isn't it?

A. I think that is correct.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. RUSTGARD.)

Q. In regard to the effect of excavating the toe of the hill, if the ground on the hillside above where the cut was made had [129] become supersaturated to the point of seeking another angle of repose independent of the cut, the cut would not cause a slide, would it? A. No.

Mr. HELLENTHAL.—We object to that, your Honor—there is no such a condition.

Q. And if the slide started above the cut instead of at the cut, the indications would be that the cut had nothing to do with it, isn't that a fact—in starting it?

Mr. HELLENTHAL.—I object to that. That is not a subject of expert testimony—it is a matter of argument.

The COURT.—It is redirect on your cross-examination. We are not talking about this particular cut, but any cut,—if the slide started above the cut, would the cut that you have been asking about have anything to do with it,—that is strictly redirect.

(Testimony of Edwin E. Bussey.)

The WITNESS.—I think that a slide could start independent of a cut, under those conditions.

Mr. RUSTGARD.—That is all.

(Witness excused.) [130]

### MORNING SESSION.

March 24, 1921, 10 A. M.

#### **Testimony of Edwin E. Bussey, for Plaintiff.**

EDWIN E. BUSSEY, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

#### Direct Examination.

(By Mr. RODEN.)

Q. What is your full name, Mr. Bussey?

A. Edwin E. Bussey.

Q. Where do you reside?      A. Juneau.

Q. How long have you lived in Juneau?

A. Nearly 7 years.

Q. What is your business?      A. Mining.

Q. Were you in Juneau, or in the neighborhood of Juneau, on the 2d day of January, 1920?

A. I was.

Q. The day that the slide occurred?      A. I was.

Q. Are you acquainted with the flume and penstock which is located on the mountain-side of Mount Roberts and which is used by the Alaska Juneau Gold Mining Company to carry water for its mill?      A. I am.

Q. On the 2d day of January, before the slide,



(Testimony of Edwin E. Bussey.)

did you have occasion to pass this penstock?

A. I passed there in the morning going to work, and in the afternoon coming home from work.

Q. What time in the morning did you pass there, Mr. Bussey?

A. Just about 7 o'clock—might have been a few minutes before or a few minutes after.

Q. At that time did you see any water coming out of the penstock?

A. There was a little bit running over the—

Q. About how much water was coming out of the penstock at that time? [131]

A. Oh, I couldn't say how much—probably fill a 2-inch pipe—maybe not so much, maybe a little more.

Q. Where was this water going to from the penstock?

A. I couldn't say,—it was falling on the ground below the penstock, but beyond that I couldn't say where it went to.

Q. You are familiar with the penstock and its construction, and the trommel screen that was in there, and the spout?

A. I never was inside of it, but I know you have to have a trommel screen.

Q. You know there was a trommel screen there?

A. Yes.

Q. And you could hear that trommel operating when you passed there, could you? A. Yes.

Q. At this time was the trommel running?

A. I don't know,—I didn't pay any attention that

(Testimony of Edwin E. Bussey.)

morning whether the trommel was running or not.

Q. Have you seen any water coming out of this penstock before this, Mr. Bussey?

A. Yes; about three or four times before that.

Q. About how long before that would you say?

A. I couldn't say. I was going to work there 6 months before the slide, or five months, and during that time I saw it several times running over.

Q. Do you know whether or not that trommel ever stopped during that time?

A. Yes; I heard the trommel stop at different times.

Q. After you passed the trommel you went into the mine and attended to your business?

A. Yes.

Q. When did you leave the mine that day?

A. I don't know,—it was in the afternoon sometime—maybe half-past one.

Q. When you came out did you pass the penstock and trommel screen again? [132]

A. Yes.

Q. Was it running then? A. I don't know.

Q. At the time that you passed there in the afternoon about two o'clock, which way did you walk down from the penstock?

A. I came down the trail toward the old administration building, there, straight down the hill.

Q. You came down the steep trail? A. Yes.

Q. That roadway right straight down the mountainside? A. Yes.

(Testimony of Edwin E. Bussey.)

Q. I wish you would show the jury on this exhibit (Plaintiff's Exhibit "A") which trail you came down.

A. I came out of the change room, and came down this trail, and this point is where the Bergmann trail comes down, then I came down this trail and came out on Front Street.

Q. And in the morning I understand you to say you came up this trail?

A. Yes, I came up this trail.

Q. That is the trail that leads from the sidehill there down to the—

A. Bergmann house.

Q. At that time did you notice any water running in that trail?     A. When I came down?

Q. Yes, sir.

A. No, there was no water running in the afternoon.

Q. At that time did you see any evidences of any water having come down that trail?     A. Yes, sir.

Q. State to the Court and jury what you saw.

A. The trail was washed out very badly from the point—just below the point of the turn down to the head point of the slide there.

Q. That would be from about this turn here, where it branches off? [133]

A. Yes; a little bit below that, down here, is about where I first noticed it—washed out from 20 to 25 feet below that.

Q. And that was washed out from there all the way down to the head of the slide?     A. Yes.

(Testimony of Edwin E. Bussey.)

Q. I show you Plaintiff's Exhibit "N," and ask you if that is about a true representation of the way conditions existed about the penstock on the 2d day of January?

A. I don't understand how you mean. Is that the way the hillside looked, you mean, at that time?

Q. Yes, and the location of the penstock?

A. Yes, that is about the location of the penstock.

Q. I show you Plaintiff's Exhibit "J," and ask you if that is the spout which was there on the 2d day of January, 1920?

A. Yes, that looks like it.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Bussey, that trail had been more or less washed out for a long time, hadn't it—more or less, I say?

A. Oh, I never noticed it, that it was washed out much before that time.

Q. Not so much, but it had been washed out some before that time?

A. I couldn't tell whether it had been washed out or dug out when they made it.

Q. There was a trail there anyhow that had been tramped down? A. Yes.

Q. And you went down towards the administration building? A. Yes.

Q. And part of that trail was washed out more

(Testimony of Edwin E. Bussey.)

or less all the way to the administration building, wasn't it?

A. Nothing like it was above that.

Q. I didn't ask you that. I say that trail was washed out [134] more or less—not so much but more or less—all the way down to the administration building?

A. I couldn't say whether it was washed any more than ordinary or not.

Q. It was washed, however, wasn't it?

A. I couldn't say as to that. I never went over that trail enough to know the conditions before that.

Q. You never went over it much before this time?

A. Only occasionally when I come down through town here.

Q. You don't know anything about the condition of the trail before the slide; is that your testimony?

A. Oh, yes; I have been over it a good many times.

Q. It had been washed out some before that time, hadn't it, by surface water coming down?

A. Just in little places.

Q. And this day when you came down part of the trail had been washed more than it was before—that is right, isn't it?

A. A great deal more.

Q. But as you went along down the trail to the administration building, the trail was washed out clear down to the administration building, wasn't

(Testimony of Edwin E. Bussey.)

it? A. I don't think so.

Q. How was the trail at the administration building,—had it been washed at all?

A. I don't think so.

Q. That trail leading to the administration building was not washed at all—is that your testimony?

A. The water seemed to leave the trail right there where the slide occurred.

Q. And from there on down to the administration building the trail did not show any evidence of being washed; is that right?

A. I couldn't say any evidence.

Q. How much evidence did it show of being washed? A. Very little. [135]

Q. Very little, that is right, is it?

A. And the upper part very much.

Q. That is right, is it? A. Yes, sir.

Q. At the point where it spilled over what evidence did you find there of wash?

A. How do you mean?

Q. At that point what had the water done there, at the head of the slide—had it cut a trench down?

A. You could see that the whole hill had slid right out where the water went over it, is all.

Q. The trail did not come right to the head of the slide, did it?

A. It is to the head of the slide now—I couldn't say whether,—no, I think there was about 2 or 3 feet left there between the trail and the head of the slide.

Q. Isn't it a fact there was 15 or 20 feet left there



(Testimony of Edwin E. Bussey.)

at that time? A. I couldn't say as to that.

Q. You don't know as to that?

A. I know there was just a big stump in between the trail and there, which now has slid down into the—

Q. You don't know whether there was more than between 2 and 3 feet between the trail and the head of the slide at the time you were there?

A. I don't think there was over three feet.

Q. You went there for the express purpose of seeing the slide, didn't you?

A. No; I wanted to see the condition below the slide—I didn't go to see the slide—I went to see what was going on down below.

Q. Didn't you stop to see the slide at all?

A. No, I looked just down below.

Q. Didn't stop to see where the slide had broken loose? A. No. [136]

Q. That was the first time you had passed the slide, as you came from the mine that day?

A. Yes, after the slide occurred.

Q. You went out of the mine about 2 o'clock, didn't you? A. Something like that.

Q. And when you went by there that was the first you had ever seen or heard of that slide? You had heard there was a slide before that, hadn't you?

A. I heard there was a slide, in the mine.

Q. And you went that way to see the slide; is that right? A. Yes, sir.

Q. And when you passed that place at the head

(Testimony of Edwin E. Bussey.)

of the slide you didn't see what the evidence was between the trail and the head of the slide, is that right?

A. Not to take any exact measurements of it, or any thought of how far it was.

A. And you didn't observe the slide from that point, is that right? You didn't look at that at all?

A. You mean the upper part of the slide?

Q. Yes.

A. I don't think I did. I just saw she started to slide there, and went on down to the bottom of the hill.

Q. And you don't know whether there was any evidence between the trail and the top of the slide of running water?

A. Oh, it was all brush in there, and this big stump sitting in there.

Q. You don't know whether there was any evidence of running water there or not?

A. No, I couldn't say so.

Q. You only observed the evidence in the trail?

A. That is all.

Q. And you looked at that very carefully?

A. Naturally—it was hard going down there—a good deal harder than it ever was before, for the roots and rocks. [137]

Q. Was there any ice in the trail?

A. Not between where the water started and that point where it left.

Q. No ice there? A. No ice there.

Q. You are sure about that, are you?

(Testimony of Edwin E. Bussey.)

A. I am sure about that.

Q. Just as sure about that as you are of anything else you have testified to? A. Yes, sir.

Q. The trail was absolutely bare and not a bit of ice from the penstock down to the slide?

A. I didn't say the penstock—where I saw the water first washing on the trail there.

Q. Where is that?

A. I couldn't say exactly. Along in here somewhere—10, 15 or 25 feet, something like that, below where the trail started down.

Q. How many feet below the penstock?

A. Oh, probably 75 feet below.

Q. Seventy-five feet below the penstock. From a point 75 feet below the penstock to the head of the slide there was no ice in the trail—that is true, isn't it? A. From where?

Q. From a point 75 feet below the penstock to the head of the slide there was no ice in the trail?

A. I didn't see any, no, sir.

Q. You would have seen ice there if there had been any, wouldn't you?

A. I would be apt to slip on it, yes, sir.

Q. And you watched that trail pretty carefully to see what was washed out, didn't you?

A. Yes.

Q. And if there had been ice you would have seen it? A. Yes, sir. [138]

Q. And you are positive now there was no ice there? A. Yes, sir.

Q. Now, on the morning of the slide you went up

(Testimony of Edwin E. Bussey.)

past the trommel screen about 7 o'clock, and into the mine? A. Yes.

Q. You took the train, I suppose? A. Yes.

Q. Where did you take the train—right at the change house?

A. A little ways in the tunnel there.

Q. That was the same train the rest of the men took to work? A. Yes.

Q. When you went past the penstock you say you don't know whether the screen was revolving or not?

A. No, I couldn't say that.

Q. On the previous occasion when you testified you said you saw water coming out of there two or three times, didn't you? A. Yes, sir.

Q. You don't remember the dates? A. No.

Q. But you remember two or three times the water was coming over there? A. Yes, sir.

Q. And the amount of water that was going over was comparatively small? A. Yes.

Q. And on those occasions when you saw the water going over the screen was standing still?

A. I think so.

Q. That is your best recollection, that the screen was standing still? A. Yes.

Q. This time you don't know whether the screen was revolving or standing still? A. No.

Q. Who else was on the trail with you? [139]

A. I was alone.

Q. There were men behind you and ahead of you, weren't there?

A. I don't know whether there was any behind

(Testimony of Edwin E. Bussey.)

me or not; there was some ahead of me I know.

Q. Just ahead of you?

A. I couldn't say—I didn't see any lights that morning.

Q. There were other men took that train that morning?

A. Yes, several men took the train at the same time that I did.

Q. That little squirt of water, you didn't stop to look at it very long?

A. No, only just to flash my light on it.

Q. And you walked by?      A. Yes, sir.

Q. And as the light reflected on it you saw the water coming from the spout?

A. I heard the water and I flashed my light and looked at it.

Q. You don't know whether the screen was standing still or not?      A. No, sir.

Q. Mr. Bussey, now, you have had a little trouble in the mine, haven't you?

A. A little trouble in the mine?

Q. You are not on the best terms with the company?      A. I don't know why.

Q. Aren't you sore about a contract that you didn't get a while ago that you thought you ought to get?

A. No; I put in my bid the same as the others did, and they got it and I didn't.

Q. You put in your bid?      A. Yes, sir.

Q. And you didn't get the contract?

A. No, sir.

(Testimony of Edwin E. Bussey.)

Q. And that is why you are a witness here?

A. No, sir.

Q. That is why you saw the water coming from the spout, isn't it?     A. No, sir. [140]

Q. And that is why you saw the trail washed out?

A. No, sir.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. RODEN.)

Q. Are you in the employ of the Alaska Juneau Gold Mining Company now, Mr. Bussey?

A. I am.

Q. Do you expect to get fired?     A. No.

Mr. HELLENTHAL.—I object to that.

Mr. RODEN.—That is all.

(Witness excused.)

**Testimony of Fred Newman, for Plaintiff.**

FRED NEWMAN, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testifies as follows:

Direct Examination.

(By Mr. RODEN.)

Q. Your name is Fred Newman?     A. Yes, sir.

Q. What is your business?     A. Mining.

Q. How long have you been around Juneau, Fred?     A. Oh, it is close to eight years now.

Q. Were you in Juneau at the time of the slide?

A. Yes, I was.



(Testimony of Fred Newman.)

Q. Where were you living then?

A. I was living downtown here.

Q. Whereabouts downtown?

A. On Gold Street—123 Gold Street. [141]

Q. Now, you went to work on the morning of the slide in the mine, did you?     A. Yes, I did.

Q. About what time?

A. Oh, something around 7 o'clock—a little before.

Q. How long did you stay in the mine that morning—until about what time?

A. I was in until about 11 o'clock.

Q. Then you came out again, and where were you going to when you came out—where were you headed for?

A. I was heading for the house where I was stopping.

Q. That was located where, did you say?

A. That was located down on Gastineau Avenue.

Q. Where was it with reference to the Koski house—you know where the Koski house was?

A. Yes, I know it.

Q. Were you living in the Koski house?

A. I was living in the Koski house at the time.

Q. That is what I am trying to get at. After you left the mine you were going to your home?

A. Yes.

Q. At the Koski house?     A. I was.

Q. When you came out of the mine did you pass the penstock?     A. Yes, I did.

(Testimony of Fred Newman.)

Q. Did you see any water coming out of the penstock at that time?

A. Yes, there was quite an overflow.

Q. About how much of an overflow would you say it was,—how big a box would you say it would take to carry it off?

A. Well, I estimate a 12 inch box would carry it—something like that.

Q. Where was this water coming from, Fred?

A. It was coming from the flume.

Q. What portion of the flume,—I mean how was it discharged? [142]

A. Why, it was coming through the screen, and then they had made an outlet on the outer side of the screen, and there was the water coming out.

Q. That is what we call the chute here?

A. Yes.

Q. Kind of a sheet-iron trough? A. Yes.

Q. How long before the slide would you say that you saw this water coming out of the chute?

A. It couldn't have been more than ten minutes before the slide—I saw it when I passed by there.

Q. And you passed by there, and which trail did you take to get down?

A. I took the Bergmann trail.

Q. You took the Bergmann trail. Why didn't you take the trail straight to the Koski house?

A. I didn't take it on account of the water.

Q. On account of which water?

A. The water was overflowing right down on the

(Testimony of Fred Newman.)

trail, across the trail, right where the two trails cross.

Q. And the reason you didn't take the trail straight to the Koski house—that is, this trail here—here was the Koski house—was because the water was flowing in here, and you took the trail along the sidehill? A. Yes, I did.

Q. Which leads down to the Moose Hall and the Bergmann? A. Yes.

Q. Where were you, about, Fred, at the time of the slide?

A. I was right down on the sidewalk there, across from the Moose Hall.

Q. You were just about the Moose Hall, then, I suppose, you heard the crash?

A. Yes; I was just starting up towards the house, and I saw the house pass by there—I saw the roof of the Koski house. [143]

Q. Had you ever seen any water coming out of the chute before this time? A. Yes, I have.

Q. About how long before?

A. Why, sometimes it might took a year between, and sometimes been only a little while when I seen it.

Q. About how often would you say?

A. I couldn't say exactly how often, but I know I seen it four or five times before that overflow.

Q. Within six months prior to the slide?

A. No, I cannot exactly state. It was something between five and seven months before; when I saw

(Testimony of Fred Newman.)

it it was quite a heavy overflow there and it washed out the trail.

Q. It washed out the trail that time?

A. Yes.

Q. Did you ever see that trommel screen stop there, Fred? A. Yes, I have.

Q. About how often did that happen?

A. Why, I haven't paid any attention to that except the times when it has overflowed.

Q. Your best recollection now is whenever it overflowed the trommel screen was stopped?

A. That is my idea about it.

Q. The usual way you took when you went home was to go down the steep trail?

A. Yes; that led right down to the house.

Q. And on this occasion you did not take it because it was full of water? A. Yes.

Mr. RODEN.—You may cross-examine. [144]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Newman, you don't know when it was any more now that you saw water coming out of that spout before,—I say you don't remember the dates? A. Oh, no.

Q. It was three or four times before that you saw water coming out?

A. Yes, I have seen it at times.

Q. You don't know when it was?

A. No, I couldn't state that.

Q. One time was about five or seven months before the slide?

(Testimony of Fred Newman.)

A. It was something like that—I know it was in the spring of 1919.

Q. In the spring of 1919, and at that time there was quite a little water coming out?

A. Yes, there was quite a bit.

Q. And the screen was standing still, wasn't it?

A. Yes, it was.

Q. It was always standing still when the water came out, that is your best recollection—as far as you remember?

A. No; I have seen a little coming out when the screen was running, too—coming out with the mud.

Q. A little water might squirt out with the leaves, you mean?

A. With the leaves; but any time it lets it out any heavier I think it stopped.

Q. What you mean to say is that when the screen is running, when there is a big bunch of leaves going over it might carry a little water with the leaves, in revolving? A. Yes.

Q. But if it was revolving there would be no water running except a little squirt that would come out with the leaves? A. Yes.

Q. That might happen once in a while?

A. Yes. [145]

Q. But if the screen was running there would be no overflow? A. No.

Q. Mr. Newman, you went up to the mine the day before, didn't you, January 1st?

A. Yes, I did.

Q. What time did you go up that day?

(Testimony of Fred Newman.)

A. I went up the usual time, a little before 7 o'clock—something like that.

Q. And you came back about 4 o'clock?

A. Yes, I did.

Q. Now, as you went by the screen that morning and that evening it was running and there was no water running over, is that right?

A. No, there was no overflow whatever then.

Q. There was no trouble on the 1st of January?

A. No.

Q. And when you came back on the first day of January it was just before dark, wasn't it?

A. Oh, I don't know.

Q. About four o'clock, wasn't it?

A. About 4 o'clock.

Q. And the screen was running, and there was no water running over it? A. Yes.

Q. That is right, isn't it? A. Yes.

Q. And when you went to work on the morning of the 2d you passed by the screen at seven o'clock, didn't you? A. Yes, about 7 o'clock.

Q. And at that time the screen was running and there was no water running over the top?

A. No, not that I noticed.

Q. The screen was running and everything was going all right? A. Yes. [146]

Q. Now, that morning you left the mine about 11 o'clock, I think you said?

A. It must have been something like that.

Q. Came out on the train, didn't you?

A. Came out on the ore train.



(Testimony of Fred Newman.)

Q. You took the ore train, where, Mr. Newman,— somewhere in the mine, wasn't it?

A. Somewhere in the mine—I don't exactly know.

Q. And you got off the train in the No. 3 tunnel?

A. In No. 3 tunnel, right off the—

Q. You got off the train at the place where the two tunnels fork and come together?

A. Yes.

Q. There was an old portal of the tunnel came out at the change house; then there was a new tunnel driven that meets No. 3 tunnel a little ways in, that is right, isn't it?     A. Yes.

Q. And the place you got off the train is where those two tunnels come together?     A. Yes.

Q. And at that place there are lights so you can see to get on and off the train?     A. Yes.

Q. And those lights were off?     A. Yes.

Q. There were no lights when you got off of the train that morning?     A. Yes.

Q. That is true, isn't it?     A. Yes.

Q. And then you walked from there to the trommel screen?     A. Yes.

Q. When you got to the trommel screen the water was coming through the spout?

A. Yes, sir. [147]

Q. The trommel screen was standing still?

A. Yes.

Q. You are sure the trommel screen was standing still?     A. Yes, I am sure.

Q. And the water was running down the hillside?

(Testimony of Fred Newman.)

A. Yes.

Q. When you heard that water coming out of there what was your first idea about notifying the company?

A. My first idea, I stepped inside and wondered if it would be any use to go in and try to get that going if I can do it, and then it ran in my mind that I hadn't ever been in there and I didn't know how it worked, and I thought the only thing to do was to come right down to the house and telephone to the power-house.

Q. You knew that that thing shouldn't be—that there was something wrong? A. Yes, sir.

Q. And you were going to tell the company, and your idea was to go down to the Koski house and ring up the office and tell them that thing was running over?

A. That was my idea about it.

Q. And you got down the hill and you found there was so much water running down the trail that you couldn't go down to the Koski house—that is, not very handy? A. Not very handy; no.

Q. And you went down the trail that goes to the Bergmann? A. Yes.

Q. And you continued down that way until you got to the Moose Hall? A. Yes.

Q. After you left the place where these two trails meet, the trail going to the administration building and the trail going to the Bergmann, and from that time on your back was towards the Koski house, wasn't it? A. Yes, it was. [148]

(Testimony of Fred Newman.)

Q. You didn't see any electric flashes at all?

A. I didn't pay any attention to that.

Q. Didn't see any electric flashes at all?

A. No.

Q. At any time that morning?

A. No, not that I saw.

Q. When you got to the place where you turned to go to the Koski house, and that was right near the Moose Hall, you saw the buildings going through the bridge, didn't you?

A. Yes, I did.

Q. That was the first you saw of the slide, wasn't it?

A. That was the only thing I saw of the slide.

Q. You saw the bridge,—when I say bridge I mean the bridge on Gastineau Avenue?

A. I didn't see the bridge—I saw the roof of the Koski house going through the bridge there.

Q. That is what you think, but you couldn't see the bridge from where you were,—the bridge was too low?     A. The bridge was too low.

Q. But you could see that the roof of the building was moving at the place where the bridge crossed?

A. Yes, sir.

Q. And you could hear the cracking of the buildings as they went through the bridge?     A. Yes.

Q. And that was the first you knew of the slide?

A. Yes; that was the first I knew of the slide.

Q. That trail, if it was good walking, you could walk from the penstock to the Moose Hall in about

(Testimony of Fred Newman.)

three minutes, couldn't you, if the trail was good—no ice in it? A. Yes.

Q. This morning how did you find the trail—icy or otherwise?

A. It was icy almost all the way down.

Q. It was very icy, wasn't it? [149]

A. Yes, it was pretty slippery.

Q. And it took you a little more than three minutes on that account?

A. I think it took us nine or ten minutes.

Q. It took you longer than usual because of the slipperiness of the trail? A. Yes.

Q. You looked at your watch, didn't you, when you got to the Moose Hall? A. Yes, sir.

Q. What time was it?

A. Just when I got down to the sidewalk I looked at my watch and it was half-past eleven.

Q. That is what your time was?

A. By my time, but my time was fast—it was 13 or 14 minutes fast.

Q. What would be the cable time?

A. I think it must have been about 19 minutes past eleven.

Q. About 19 minutes after eleven you got to the Moose Hall? A. Yes.

Q. That was cable time? A. Yes.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. RODEN.)

Q. The slide happened before you had an opportunity to telephone to the company?

(Testimony of Fred Newman.)

A. Yes, it did.

Q. And your idea for telephoning was because you realized that water running over there was likely to cause damage, wasn't it?     A. Yes.

Q. The ice you speak of was on the trail which you took—that is, this trail here?

A. Yes; that is the Bergmann trail. [150]

Q. Yes, the Bergmann trail, coming down the sidehill?     A. Yes.

Mr. RODEN.—That is all.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. There was ice all the way down, wasn't there, Mr. Newman, on the other trail, too?

A. From the place where the two trails split there was ice almost all the way down, but right up there at the curve, from this curve right here, from here down to here, just at that point here it was icy, but this here space was bare—there wasn't any ice in that.

Q. That place was a little protected?

A. Yes; there is trees over it and it don't get much snow.

Mr. HELLENTHAL.—That is all.

Q. (By Mr. RODEN.) And at that time when you came down you don't know what the condition of this trail was, as to being icy or not?

A. I think it was a little icy in the morning when I went up.

Q. (By Mr. RODEN.) I mean just before the

(Testimony of Fred Newman.)

slide? A. No, I don't know anything about it.

Q. (By Mr. RODEN.) Who was with you at the time you came out of the mine about eleven o'clock or so? A. Jack Johnson was with me.

Mr. RODEN.—That is all.

(Witness excused.) [151]

**Testimony of Jack Johnson, for Plaintiff.**

JACK JOHNSON, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Direct Examination.**

(By Mr. RODEN.)

Q. What is your name? A. Jack Johnson.

Q. What is your business? A. Mining.

Q. Are you the Jack Johnson that Mr. Newman said was with him at the time he came out of the mine? A. Yes, sir.

Q. About what time in the morning was that?

A. When we went up to the mine?

Q. No, when you came back.

A. That was about 11 o'clock.

Q. Did you pass the penstock and trommel screen that morning? A. Yes.

Q. Did you see any water coming out of the penstock? A. Not in the morning.

Q. I mean about 11 o'clock when you came out of the mine?

A. We left about eleven, and when we came there was quite a bit of water coming over there.



(Testimony of Jack Johnson.)

Q. Where was this water coming from?

A. It was coming from the penstock.

Q. About what size box would it take to carry off this water, practically speaking?

A. That is kind of hard to judge, but I kind of judge it should take a 12-inch box, or probably bigger.

Q. Now, at that time do you know whether the trommel screen had stopped?

A. Well, it was stopped at that time.

Q. Did you come down the trail with Mr. Newman, down to the Moose Hall? [152]

A. Yes, he come with me.

Q. When you were down near the Moose Hall you heard the buildings crash down through the bridge there? A. Yes.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Johnson, you went to work in the morning the day before, didn't you? A. Yes.

Q. Went around 7 o'clock.

A. Around 7 o'clock.

Q. You took the train in the morning?

A. That is right.

Q. And you came back the evening of the first at about what time?

A. Oh, around 4 o'clock—something like that.

Q. Just before dark?

A. Yes; I guess it was a little dark then already.

(Testimony of Jack Johnson.)

Q. It was just getting a little dark? A. Yes.

Q. When you went up that morning of January 1st, and came back, you went by the trommel screen, didn't you? A. Yes.

Q. And the screen was running in the morning and also in the afternoon?

A. It was running in the morning.

Q. And also when you came back?

A. Not when we came back.

Q. I mean the day before the slide—I am not talking about the day of the slide, but the day before—New Year's day.

A. Yes, it was running then.

Q. And there was no water coming from it either time? A. Not that I noticed then. [153]

Q. When you went up in the morning the day of the slide you went by that trommel screen again, didn't you? A. Yes, sir.

Q. And the screen was running all right then, wasn't it? A. Yes.

Q. And there was no water running from it at that time? A. Not that I noticed.

Q. Then you went to the mine? A. Yes.

Q. And you quit a little early that morning because the lights were out?

A. Yes; we quit about 11 o'clock.

Q. And you took the train out, didn't you?

A. Yes.

Q. You took the train in the mine? A. Yes.

Q. You got off the ore train at the same place Newman got off, in No. 3 tunnel, didn't you?

(Testimony of Jack Johnson.)

A. Yes, sir.

Q. That is where the two tunnels come together?

A. Yes.

Q. Where the old tunnel and the new tunnel meet?     A. Yes, sir.

Q. There is a place there where men get off and on the train?     A. Yes.

Q. And there are lights there so you can see to get off and on?     A. Yes, sir.

Q. This day of the slide the lights were out?

A. Yes; there were no lights then.

Q. When you got to the trommel screen the trommel screen stood still, didn't it?     A. Yes, sir.

Q. And the water was running over it?

A. Yes, sir. [154]

Q. You went directly to the Moose Hall?

A. Yes.

Q. You saw no electric flashes that morning either, did you?     A. No.

Q. No electric flashes at all?     A. No.

Q. That looked like lightning or anything of that kind?     A. No.

Q. You went to the Moose Hall and you saw the buildings also when they were going through Gastineau Avenue; isn't that right?

A. I heard them when they crossed the street there.

Q. When they were crossing the street?

A. Yes.

Q. That is you could see by the roof of the Koski house that the Koski house was going across the

(Testimony of Jack Johnson.)

street,—that is Gastineau Avenue you mean by the street, don't you? A. Yes, sir.

Q. And you could hear the buildings crack as they went through the street? A. Yes.

Q. That is the first you saw of the slide, was it?

A. That was the first I saw.

Q. That is right, isn't it? A. Yes.

Q. That trail leading from the penstock down to the Moose Hall was icy, wasn't it?

A. Yes, it was icy.

Q. So icy you couldn't walk as fast as you could have walked had it been—

A. Oh, no; we couldn't walk as fast as we used to do when the trail was good.

Q. If it was good walking you could make it down there in three minutes, but it took you considerably longer?

A. Oh, I think it would take a little more than three minutes [155] if the trail was good.

Q. If you walked fast you could make it in three minutes, if the trail was real good; isn't that right?

A. Yes.

Q. This morning almost the whole trail was covered with ice?

A. Almost the whole trail was covered by ice—there may have been a few bare spaces, but not many.

Q. There might have been a few bare spaces, but the most of the trail was covered with ice?

A. Yes.

Q. And the ice on there impeded your speed so

(Testimony of Jack Johnson.)

it took you a little longer?     A. Yes.

Q. That is right, Mr. Johnson, isn't it?

A. That is right, yes.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [156]

**Testimony of William Geddes, for Plaintiff.**

WILLIAM GEDDES, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. Your name is William Geddes?

A. William Geddes.

Q. What is your business, Mr. Geddes?

A. For the past two years I have been in the boat business—that is, the cannery business.

Q. Were you in the town of Juneau on the 2d day of January, 1920, the day on which this slide occurred?     A. Yes, sir.

Q. That morning did you have occasion to go up or down Front Street prior to the slide?

Q. My boat was anchored at the lower city float, or tied to the lower city float, and I was on the way down to the boat between the hours of 10 and 11, I guess—somewhere in there.

Q. Did you look up on the sidehill in the direction of the flume and penstock that is operated by the Alaska Juneau Gold Mining Company?

(Testimony of William Geddes.)

A. I did.

Q. Did you see any water coming out of there?

A. I did.

Q. Where was this water coming from, Mr. Geddes?

A. It looked to me at that time, because I stopped and spoke about it, to be a stream about 30 inches wide—how deep I couldn't tell. It looked to me at that time as if it was the flume, but afterwards looking at it I saw it was the penstock.

Q. Where was this water going to?

A. It didn't seem to show up any place—seemed to be shooting out on a hog-back there—on the ground—coming out of the flume and hitting on the hog-back.

Q. There was a lot of timber and brush up there and you couldn't follow that water, could you?

A. No, sir. [157]

Q. Did you see the water at any place further down the hill?

A. Down towards the bottom of the hill?

Q. Yes. A. No, I never noticed.

Q. About what time in the morning was it when you saw this water coming out of there?

A. I am at a loss to say—it was just about 30 minutes, however, I think before the slide occurred.

Q. After you saw this you went down to the lower city float? A. No, sir.

Q. You were coming this way?

A. No; we went down to the present city dock and it was raining so hard that we turned around



(Testimony of William Geddes.)

and came out and took a look at Gold Creek.

Q. Where were you when the slide occurred?

A. Just about Cash Cole's barn, the other side of the old Pacific Coast dock here.

Q. Did you then turn back?

A. We turned back, yes, sir.

Q. Did you see any water coming out of this same place then?

A. After we got back on to the present Pacific Coast dock, why, we saw water coming out of the same place, yes, sir.

Q. Was the volume coming out about the same?

A. That I couldn't tell because I didn't notice the last time—I stood there and looked at it but I didn't see whether it was the same volume or not.

Q. Did you see any water at that time coming over the slide area?

A. Oh, I saw it hit on top of the slide, yes.

Q. Did you go down then and look at the slide?

A. Yes, sir.

Q. Was the water running there then when you got down there?      A. Yes, sir.

Q. I suppose you walked just about as fast as you could after the slide happened to get down to the scene of the slide?

A. I ran across the old Pacific Coast dock on to the new dock. [158]

Q. It would be a matter of a few minutes for you to get down there?

A. Oh, I should judge it was 4 minutes—three or four minutes.

(Testimony of William Geddes.)

Q. And when you got down there the water was still running? A. Yes, sir.

Q. And coming out of this penstock?

A. Yes, sir.

Q. Running over the slide area? A. Yes, sir.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Billy, you were at the city float, you say, shortly before eleven o'clock, or in that neighborhood? A. At the city dock, yes.

Q. And from there you looked up on the hillside?

A. No, sir.

Q. Wasn't it from there that you looked up?

A. No.

Q. From the city dock?

A. No, sir; it was passing by the front of the soda works, on the way down.

Q. Oh, on the way down—you were on Front Street? A. On Front Street; yes, sir.

Q. And you looked up the hillside then and you saw a stream of water about 30 inches wide coming from what seemed to you to be the Alaska Juneau flume? A. Yes, sir.

Q. At that time it looked to you as though it was coming right over the flume?

A. No, it was a square volume of water.

Q. Yes, it was a full stream, and in one stream?

A. One stream.

Q. Looked as though it was coming from the flume at some place?

(Testimony of William Geddes.)

A. At that time it did. [159]

Q. The stream was about how wide?

A. Well, I should judge,—

Q. Just a guess.

A. Yes, it is a guess—about 30 inches, it looked to me at that time, because I remarked to a man that was with me about this stream.

Q. It was a thin stream coming over the flume?

A. Oh, I couldn't tell the volume because it was way up on the hill.

Q. You couldn't see the thickness, could you, Billy?

A. No, you couldn't—you couldn't tell at that distance just the thickness of the water.

Q. The stream was facing you so that you couldn't see through the stream of water?

A. No, you couldn't see through it.

Q. It was a flat stream apparently about 30 inches wide, running down from the level of the flume—that is right, isn't it?

A. Yes; it came from the flume, just on the bend where she comes around—that is the way it looked to me,—I didn't examine it at all.

Q. Right where the flume bends, where it comes around there, there seemed to be an overflow there about 30 inches wide, you think?     A. Yes.

Q. And that is how it looked to you at that time?

A. Yes, sir.

Q. You didn't observe it any more that morning until after the slide?

A. Until after the slide.

(Testimony of William Geddes.)

Q. Now, that was the only stream of water you saw running in that neighborhood, wasn't it, Billy?

A. Oh, lower down—

Q. I know, but I mean—

A. Yes, sir. [160]

Q. There was water running in the gulches, but that was the only stream you saw on that flume level? A. Yes, sir.

Q. And later on, as you considered it, you thought instead of coming from that flume that it might have come from the penstock,—that is your idea, isn't it?

A. After going back the second time I saw where it came from—that is after the slide—I noticed it was the penstock.

Q. After the slide you noticed it came from the penstock?

A. Yes; the overflow from the chute of the penstock.

Q. That is the time? A. Yes, that is the time.

Q. But that was after the slide had happened?

A. Yes, sir.

Q. About 5 minutes or so after, you think, Billy?

A. Just about.

Q. You have seen water running down that hillside down by Goldstein's store many times, haven't you, Billy?

A. More or less in the gulches in heavy rains.

Q. When there was a heavy rain it used to run into the store when you were there, didn't it?

A. There was one time there was some water

(Testimony of William Geddes.)

come in; the store is lower than the ground, and it ran in—we had a rain—

Q. Just heavy rains come down that gulch. There is a gulch that comes down right behind the store or right near the store?

A. I don't know—I don't hardly think there is a gulch—it branches off the other way.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. RODEN.)

Q. This water which you saw coming into the store wasn't a stream of water—it was seepage coming out of the bank?

A. Seepage coming out of the bank and the bulkhead, yes, sir. [161]

Q. You are positive that the water coming down before the slide came from the same place that you saw it coming from after the slide?

Mr. HELLENTHAL.—We object—the witness has gone all over that, and it is a leading question. The witness has stated what his impression was,—he has stated how it seemed to him at first and how it seemed to him afterwards.

The COURT.—I think the objection to the question is that it is decidedly leading, but I do not think there is any objection to getting it straight before the jury.

Q. All right, I will ask it again. The water which you saw before the slide, Mr. Geddes, where was that coming from? A. Before the slide?

(Testimony of William Geddes.)

Q. Yes.

Mr. HELLENTHAL.—That is not redirect, your Honor.

Mr. HELLENTHAL.—That is all.

The COURT.—I know, Mr. Hellenthal, but there seems to be some uncertainty about the two streams of water and counsel is entitled to get it straight before the jury so the jury will know just what his testimony is.

A. It was coming from a chute.

Q. From the chute? A. Yes, sir.

Q. Where was the water coming from which you saw after the slide? A. From the same chute.

Mr. RODEN.—That is all.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. That wasn't your impression at the time you first saw it, was it, Billy? A. Yes, sir.

Q. When you first saw it? Didn't you just testify to me that to your appearance when you were in front of the soda works the water looked to you as though it came from the flume, at the place where the flume bends—that is right, isn't it,—[162] that is the way it looked to you at that time, isn't that right?

A. It looked, if I might explain, as if there was a chute in the flume,—it looked as if the flume had been cut and a chute put in at that point.

Q. It looked as if there was a chute in the flume at the bend, and the water was coming out of there?



(Testimony of William Geddes.)

A. At first, yes.

Q. That is right, isn't it?      A. At first, yes.

Mr. HELLENTHAL.—That is all.

Mr. RODEN.—I show you Plaintiff's Exhibit "J"—is that the chute you are speaking about?

The WITNESS.—I couldn't tell because I never was up there and you would have to be close to observe that chute behind the bend and one thing and another—I couldn't tell from that exhibit.

Mr. HELLENTHAL.—You were where you could not see that chute—from where you were you couldn't see that chute?

A. I don't know whether I could see this present chute or not.

Mr. HELLENTHAL.—It was too far away?

The WITNESS.—Well, this is built in that way—I couldn't see it.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [163]

**Testimony of Clarence Geddes, for Plaintiff.**

CLARENCE GEDDES, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Direct Examination.**

(By Mr. RODEN.)

Q. Your name is Clarence Geddes?      A. Yes.

Q. What is your business?

A. I operate a gas-boat.

Q. Were you in the town of Juneau on the 2d

(Testimony of Clarence Geddes.)

day of January, 1920? A. I was.

Q. At the time of the slide that morning, Mr. Geddes, did you have occasion to pass the soda works on Front Street in the town of Juneau?

A. I did.

Q. About what time were you down there?

A. Between 10:30 and 11:30—somewhere in there.

Q. At that time did you look up the sidehill in the direction of the penstock and the flume operated by the Alaska Juneau Gold Mining Company?

A. I did.

Q. Did you see any water coming out of that flume or penstock, in there? A. I did.

Q. Where did you see the water coming from?

A. As near as I could judge the water was coming out of what was known as the penstock.

Q. How much water was coming out of there, Mr. Geddes?

A. Well, I should judge between a 36 and 40-inch stream.

Q. Where was this stream running to?

A. Well, as near as I can make out, it was dropping down on top of a hog-back there—from there on I couldn't see.

Q. About what time was that in the morning, as near as you can recollect?

A. About 10:30 or 11—somewhere in there. [164]

Q. After you had seen that what did you do?

A. I walked down to the city dock, looked around the city dock a while, and then walked back again.

Q. Where were you at the time of the slide?

(Testimony of Clarence Geddes.)

A. Right in front of Cash Cole's barn.

Q. Did you go back and look at the slide then?

A. The minute I heard the slide coming down I started to run over towards the slide.

Q. Did you see any water there then?

A. The water was running for about 30 minutes after the slide.

Q. The water which you saw then, where was that coming from?

A. Oh, from exactly the same place—from the penstock.

Q. Where was it running with reference to the ground which broke loose in the slide?

A. The water, as near as I could make out, was hitting right down on top of where the slide started from.

Q. About how long did it take you to get from Cash Cole's down to the scene of the slide?

A. I couldn't say—I ran all the way—I suppose a couple or three minutes—somewhere along there.

Q. And at that time you saw the water running at the same place?      A. Exactly.

Q. And hitting on the ground where it broke loose?

A. At the same spot where the ground caved in.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. In the morning you went down to the city wharf, you say?      A. Yes.

(Testimony of Clarence Geddes.)

Q. About half-past ten or eleven o'clock?

A. Exactly.

Q. Might have been five minutes after eleven?

A. I don't think it was anywhere around eleven,—it might have been half-past ten, but I don't think it was any later. [165]

Q. Didn't you just say you thought it was between half-past ten and eleven?

A. Somewhere in there; yes.

Q. Eleven would be in there, wouldn't it?

A. Yes.

Q. If it was about eleven o'clock, wouldn't that be about as near a guess as you can make of it?

A. Somewhere in there.

Q. Might have been five minutes earlier or five minutes later? A. Yes.

Q. Then you saw a stream of water coming from the level of the Alaska Juneau flume?

A. From the end of the Alaska Juneau flume.

Q. Who drilled you on that end of the flume business?

A. No one drilled me on the end of the flume business.

Q. How wide was that stream?

A. 36 to 40 inches.

Q. 36 to 40 inches wide, a flat stream that was coming down right straight towards you, you couldn't tell how deep it was?

A. Yes; I was standing in front of the Alaska Soda Bottling Works there when I first noticed it.

Q. You were facing it? A. Yes.

(Testimony of Clarence Geddes.)

Q. Could you see just how wide it was?

A. Not the exact width of it, but as near as I can place it.

Q. Of course you couldn't tell from that distance the exact width? A. No.

Q. But you thought at that time it was a 36 or 40-inch wide stream, in that neighborhood?

A. Yes.

Q. You couldn't tell how deep it was? A. No.

Q. Couldn't tell the depth of it? A. No.

Q. Could only tell the width of it? [166]

A. Yes.

Q. It was running straight towards you so you could only see the face of it? A. Yes.

Q. Then you went down to the city wharf, and then you walked up town again?

A. Walked up town.

Q. You walked up towards town and then after the slide you went back? A. Yes.

Q. How far did that water drop before it hit the ground? A. 65 or 70 feet, I should judge.

Q. 65 to 70 feet from the place where it spilled over there until it hit the ground? A. Yes.

Q. How many streams of water did you see—only one stream? A. Only one that I noticed.

Q. There was only one stream coming from the flume? The water in the gulches, I don't mean that, but the water coming from the flume? A. Yes.

Q. That is right, isn't it? A. Yes.

Q. Now, it was raining hard, wasn't it?

A. It was.

(Testimony of Clarence Geddes.)

Q. Very hard? A. Very hard; yes, sir.

Q. And had been raining very hard all that forenoon, or pretty much of that forenoon—that is right, isn't it? A. It is.

Q. Were you ever up to the Alaska Juneau flume? A. I never was up to the flume; no.

Q. You don't know where the penstock is, do you?

A. From what I understand, it is right on the end of the flume.

Q. It has been pointed out to you on these pictures, hasn't it? [167]

A. It has not—I have never seen the pictures of it.

Q. You have been told there was a penstock at the end of the flume?

A. For the last year and a half I have known there was a penstock, but I supposed it was a flume.

Q. What kind of a thing was the penstock up there? Describe it to me.

A. As near as I can understand, it was a square box—

Q. Tell me from what you saw,—how did it look to you? You can not tell, can you—from the street where you were you could not tell, could you,—you have never been where you could see it—isn't that right? A. Yes, sir.

Q. Describe the penstock to me.

A. As I said, I was told that was the penstock, but it looked to me like it would be the end of the flume, from where I was.

Q. You don't know whether it was a penstock or



(Testimony of Clarence Geddes.)

what it was, do you? A. No.

Q. You don't know whether there was a penstock up there only from what they told you?

A. That is all.

Q. You don't know where the penstock was—whether it was near the end of the flume or not, from your own knowledge?

A. Not the penstock, but I know where the water was running there.

Q. You didn't know where the penstock was, did you—that is true?

A. As I told you before, I don't know whether there was a penstock there only from what I have been told.

Q. You couldn't trace that water down the hill when you were in front of the soda works—that was the time you saw the water running down the hog-back, was it, and that was the second time you testified to?

A. It was about 45 minutes before the slide, I should judge, that I seen the water coming down the hill, and by the time I walked back again until the slide occurred— [168]

Q. When you walked back the second time was when you saw it coming over the hog-back, isn't that true? A. On *my* down to the city dock.

Q. That water was running through the brush, wasn't it—wherever it was running?

A. I couldn't tell whether it was running down the hill or not but I could see the water from the top of the flume.

(Testimony of Clarence Geddes.)

Q. You couldn't tell where it was running down the hill? A. No.

Q. All you know, at that time the water was running from the top of the flume level and then fell 60 or 70 feet? A. Yes.

Q. And then you lost track of it? A. Yes.

Q. And when you talk about the water coming on the hog-back, that is when you were up there later on? A. Yes, sir.

Q. That is true, isn't it? A. Yes, sir.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [169]

**Testimony of Isadore Goldstein, in His Own Behalf.**

ISADORE GOLDSTEIN, the plaintiff herein, upon being called as a witness in his own behalf, being first duly sworn, testified as follows:

**Direct Examination.**

(By Mr. RODEN.)

Q. What is your name? A. Isadore Goldstein.

Q. Where do you live? A. Juneau.

Q. How long have you lived in Juneau, Mr. Goldstein? A. Thirty-four years.

Q. Whereabouts are you living in Juneau?

A. Lower Front Street.

Q. Do you know the number of the lot and block you are living in?

A. Yes; it is 136 Franklin Street—lot 1, block M.

Q. Now, were you living in the town of Juneau on the 2d day of January, 1920, at the time of the slide? A. I was.

(Testimony of Isadore Goldstein.)

Q. What time in the morning did you get to your store?     A. At about 9 o'clock.

Q. Was your attention at that time, or soon after, called to anything unusual that was happening?

A. Not at that time, nothing unusual.

Q. Well, did anything unusual attract your attention shortly after that time?

A. About, I should imagine, along about 11 o'clock or five minutes to 11—something like that.

Q. What attracted your attention then?

A. I was in the store with another man—I was working on my books, and this man was standing in front of my desk talking to me; all at once I heard a big rush of water and I said to that fellow, "My God, listen to that water—there must be a hydrant or water-main busted up on the hill." So we started out the back door to see where that water was coming from, and as we [170] opened the door the water rushed right in through the back there, and he and I walked out and I said, "It is going to flood the store." I said, "Let's see if we can't ditch it, and try to get it to go under the foundation and out on to the beach"; and he and I got to work with sticks trying to punch holes under the store to see if the water wouldn't go under the store out to the beach, and as we were working out there I heard a crash and I said, "My God, Louie, here comes a slide—let's beat it," and so we rushed out the front door of the store. As we were going out the front door the slide hit the back of my building

(Testimony of Isadore Goldstein.)

and the water and mud and everything went rushing through the store.

Q. What did you do after that?

A. We heard people hollering for help. I had an apartment house back of the store, and I thought it was the people up there, and so I started up over the building to go to where they were. I said, "There is a woman caught in that apartment; let's see if we cannot get her out." He and I started over the building to get to where these people were.

Q. At that time did you see where this water and debris in your store came from?

A. Didn't see until we got on top of the building.

Q. Did you see it then?

A. We got up on top of the building, and looked to see where the water was coming from, and it was coming from that penstock.

Q. The penstock of what?

A. Of the Alaska Juneau Company.

Q. Where was that located with reference to your property? A. Directly above it, on the hill.

Q. How much water was coming down then?

A. I wouldn't say how much water—there was quite a big body of water.

Q. How long was it after you heard the crash until you were up on top of the roof there and saw this water coming out of the penstock? [171]

A. It couldn't have been more than two or three minutes—we were walking pretty fast.

Q. Describe the material that came into your store, and to the back of your store?

(Testimony of Isadore Goldstein.)

A. It was muck, water, mud, rocks,—well, there was everything came through there—everything you could think of—there was a piece of a stove came, stove-pipes, and everything you could think of, was coming right through the place.

Q. And mud and debris and rocks?

A. And mud, debris, rocks and water.

Q. Where did this material come from?

A. From right off up the top of the hill there.

Q. Were you on top of the roof before the fire department got there?     A. I was.

Q. After you got up on the roof there what did you do?

A. We tried to help get this blacksmith out, that was jammed in between the two buildings—he was the man that was hollering there—he was jammed in between the two buildings. We worked on him until the fire department got there; and the firemen were all climbing up around there, and I said, “I better go down and see what I can do with my own joint now,” and I started back to my own place.

Q. Do you know how long this water kept on running?

A. I imagine it was half an hour, maybe a little longer than that, before it stopped coming through my store.

Q. Do you know how it happened to stop?

A. I don't know how it happened to stop. I was told they shut it off up above—I didn't see them do it.

(Testimony of Isadore Goldstein.)

Q. You are the owner of several lots there, Mr. Goldstein?     A. I was.

Q. I think it is admitted that you were the owner of lots 1, 2 and 4, in block M.

A. I was. [172]

Q. In the town of Juneau?     A. Yes, sir.

Q. Were these lots improved?     A. They were.

Q. How were they located with reference to each other?

A. Two of the lots run directly up the hill for 200 feet from Front Street, up to Gastineau Avenue—directly up the hill. The lot up on the hill was 50x100, and the one on the lower end was 36x100.

Q. How long had you been in the occupancy of these lots?

A. Since 1886—that is, one of the lots—that is where the store building is.

Q. How had these lots been improved?

A. Where the store building is, there is a two-story building 36 by 50—2 stories high; and then there was a big shed in the back of that; and directly back of that was an apartment house 48 feet square, two stories.

Q. Have you made a list so that you would be able to tell the Court and jury the value of these different pieces of property?

A. I have, as near as I can judge the value of them.

Q. Have you got that statement with you?

A. I have.



(Testimony of Isadore Goldstein.)

Q. You may use that in describing the different values.

A. You mean the value of the property or the value of the damages? I estimated the value of the damage done to the property.

Q. Give us the estimated damage.

A. The damage I consider done to the store building was \$1500.00.

Q. How did you arrive at that figure?

A. I estimated that value on it.

Q. What did you base that estimate on?

A. What it costs to do work at the present time, or did at the time of the slide.

Q. Have you made inquiries as to what it would cost?

A. I have made inquiries of different carpenters.

[173]

Q. Go ahead.

A. The damage to the stock in the store was \$2500.00.

Q. To the stock?

A. Yes, by water and mud—that was damage to the stock.

Q. How did you arrive at that figure?

A. Why, the amount of goods that was damaged and was lost, at the price goods was worth at that time.

Q. Go ahead.

A. Warehouse damages \$1500.00. I had to rebuild that.

(Testimony of Isadore Goldstein.)

Q. How much did it cost to rebuild it?

A. It cost me,—Well, it isn't finished yet. I have spent about \$700 on it so far, but it is just about half completed—haven't been able to finish it up.

Q. Go ahead.

A. The apartment house on the hill at \$8500.00.

Q. How did you decide on that?

A. That is what it would cost me to rebuild it. I have had estimates from carpenters, what it would cost to rebuild that property; and there was fixtures in the apartment house, \$2000.00—there were four 5 room apartments. Three rows of cabins, \$3000; and damage to building on lot 2, block M—that is the building which the Russell gun store is in, which I own—figure it would cost \$1000 to rebuild that; and then damage to the lots on the hill \$1500.00.

Q. What is that real estate worth now?

A. It is worth,—well, I don't know—they are taxing me a hundred dollars for the lots at the present time—that is what the last assessment was.

Q. How much was the last assessment before the slide?

A. \$1500.00; and they assessed me a hundred dollars for the lots where the apartment house was.

Q. That is the city assessor?

A. The city assessor, yes, sir.

Q. What else did you lose at that time, Mr. Goldstein? [174] A. Well, I don't know.

(Testimony of Isadore Goldstein.)

Q. Have you given a complete list now of the items?

A. Outside of the furniture and fixtures in the apartment house—I had to itemize those.

Q. What was the furniture and fixtures worth?

A. The way I have it itemized, general merchandise in the store, consisting of boots, groceries, shoes and clothing, \$1500.00; groceries in the warehouse, consisting of rice, bacon, hams, flour, beans, etc., \$1000.00; furniture and fixtures in apartment house, 4 stoves at \$25.00, \$100.00; 4 kitchen ranges at \$100.00, \$400.00; 10 rugs at \$25.00, \$250.00; 4 beds with springs and mattress at \$40.00, \$160.00; 4 tables at \$25.00, \$100.00; 4 dressers at \$30.00, \$120.00; 20 chairs at \$5.00, \$100.00; 8 sets light fixtures at \$10.00, \$80.00; kitchen utensils consisting of pots, pans and dishes, \$230.00; 4 sets linoleum at \$25.00, \$100.00; 4 bathtubs at \$35.00, \$140.00; 4 sinks at \$15.00, \$60.00; 4 wash-bowls at \$15.00, \$60.00; 4 toilets at \$25.00, \$100.00.

Q. Makes a total of how much?

A. \$21,500.00.

Q. Is that a fair estimate and valuation of the property which you lost at that time?

A. I consider it fair, yes. I don't think it could be duplicated for any less than that.

Q. You say this property had been occupied since when?

A. The store building had been occupied since 1886—that is, the premises; the other had been

(Testimony of Isadore Goldstein.)

occupied since 1913, I think that was the time it was built.

Q. Now, this place where you were living, I want to ask you if any of the adjoining property around the neighborhood had been occupied and improved any prior to the slide?

A. It sure had—the entire Front Street had been occupied for years back, as far as I can remember.

Q. How far back can you remember?

A. About 30 years. [175]

Q. What damaged this property that you have enumerated here?

A. The landslide back of the buildings, coming from the top of the hill there.

Q. When did this happen?

A. January 2, 1920.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Goldstein, I think you stated before the store building which is there now,—that isn't the building that was there in 1886? A. No, sir.

Q. It is a new building?

A. It is on the same lot.

Q. You had a store building there back in the early days and occupied it? A. Yes, sir.

Q. And the property behind that, you put your improvements on in 1913, didn't you?

A. Either 1912 or 1913, I wouldn't say for certain.

(Testimony of Isadore Goldstein.)

Q. About that time?     A. Yes.

Q. And the valuation that the city placed upon that was \$1300.00, you say?

A. No, I think it was \$1500.00, on that lot.

Q. That is when the buildings were on it?

A. No, sir, the lot.

Q. On the lot?     A. On the lot.

Q. The buildings were on the ground the year before the slide, weren't they?     A. Yes.

Q. What was the valuation of the lot at that time? [176]     A. The assessed valuation?

Q. Yes.

A. I wouldn't say for certain—I don't remember what that was.

Q. Approximately?

A. I don't remember what it was,—I would have to look up the records to see.

Q. You don't mean to say the lot was assessed at \$1500.00?     A. It was valued at \$1500.00.

Q. It was not assessed at that?     A. No.

Q. The comparison you have there now is the assessment that was made when the buildings were upon the lot?     A. Yes, sir.

Q. And it was assessed at \$100.00 after the slide?

A. The bare lot was assessed at \$100.00.

Q. And when the buildings were there it was assessed at \$1500.00 for the lot?     A. For the lot?

Q. Yes.     A. No, sir, it was not.

Q. Was the value of the house assessed separately?     A. No, sir.

Q. Well, how did they separate the value of the

(Testimony of Isadore Goldstein.)

house and the value of the lot?

A. He asked me what was the value of the lot and I told him, and then they put the value of the house and lot together.

Q. How much was that, do you remember?

A. I think it was \$4500 or \$5000 that was assessed at—I wouldn't say for certain.

Q. Did that include the store building?

A. No, sir.

Q. That was the property behind the store?

A. That was the apartment house.

Q. The store building was a separate proposition? [177] A. Yes, sir.

Q. The apartment house and the cabins were all on the same lot, weren't they?

A. No, they were not on that same lot.

Q. Weren't they on that same assessment?

A. No, sir.

Q. How much were the cabins assessed at?

A. I wouldn't say for certain—I think it was a thousand dollars but I wouldn't say for certain until I looked it up.

Q. How much was the store assessed at?

A. The building and the lot I think is \$5000.00.

Q. The items of damaged stock you had in there, do you remember what particular articles of merchandise were damaged? In the store,— not in the warehouse, now, but in the store.

A. I wouldn't say the particular items, no.

Q. Did you make a list of those things that were damaged, at that time? A. I did not.



(Testimony of Isadore Goldstein.)

Q. And your estimate as to what the damage was is a mere estimate?     A. A mere estimate.

Q. You wouldn't be able to tell us now what that estimate consisted of—that is to say, what the articles were that were damaged?     A. No.

Q. You don't know whether it was tins or bulk?

A. I know it was all included in that. I don't know just the particular stuff I lost there—I don't know the articles—I know some of them, but I don't know just how much.

Q. The estimate of the damage in the store was in your judgment \$1500.00?

A. I don't know whether it was \$1500—I read it off the list here.

Q. \$1500.00 is my recollection.

A. \$2500.00. [178]

Q. That \$2500.00, is that damage to the stock in the store?     A. What stock in the store?

Q. You don't know what the damage was that was done?

A. I am estimating how much damage was done. I wouldn't come here on oath and testify how much damage was done because there is no way of figuring it up, because that stuff was going right out of the front door on to the beach, and I didn't stand there in the door and check it up as it went out of the store.

Q. You don't know what it was that went out at that time?     A. I do not, no, sir.

Q. Your estimate is based upon your best judgment as to what you think your damage was?

(Testimony of Isadore Goldstein.)

A. Yes, sir.

Q. You wouldn't testify that that was it or wasn't it—is that right? A. I would not.

Q. And that is true of the other things you have spoken of? A. It is.

Q. The stuff in the warehouse, you don't know just what that was?

A. I couldn't get into my warehouse for 2 weeks because the buildings were laying right on top of it.

Q. There was no way of getting at it, and you only estimated it? A. Only estimated it.

Q. There was no way of telling except by giving your best judgment upon it? A. Yes.

Q. Your furniture in the apartment house, Mr. Goldstein, did that cost you the amount of money that you say it did, or that you estimate it was worth at the time of the slide?

A. I estimate it was worth that at the time of the slide.

Q. It cost you less than that, didn't it?

A. I don't know whether it did or not,—I don't know what I did pay for it.

Q. The buildings, how much did they cost you?  
[179]

A. I don't remember what that was either, but I know the apartment house cost me about \$8000.00.

Q. And as to the rest of the buildings, you don't know? A. I don't know.

Q. When was the apartment house built?

A. 1913, I think it was,— 1913 or '14.

(Testimony of Isadore Goldstein.)

Q. And you have rented it ever since to tenants?

A. Yes, sir.

Q. Occupied pretty nearly all the time?

A. Not all the time,—they were moving in and out of them all the time.

Q. Had been used as a building for rent?

A. Yes, sir.

Q. That included the plumbing and the plumbing fixtures, and everything like that?     A. Yes, sir.

Q. That took the plumbing fixtures in?

A. Yes, that is the plumbing fixtures,—

Q. I don't mean furniture, I mean plumbing fixtures, bath tubs and stuff like that?     A. Yes.

Q. When you built the new store, Mr. Goldstein, I think you have already testified in the other case that you made a cut behind the store?

A. Yes, sir.

Q. Of considerable depth?     A. Yes, sir.

Q. And you had a slide there that shoved the store out into the street—isn't that right?

A. Yes, sir.

Q. That was before you had a bulkhead put in?

A. No, the slide happened after I put the bulkhead in. I put one bulkhead in and it went out with it.

Q. The bulkhead was not strong enough to hold it?     A. No, sir. [180]

Q. And then you put in a stronger bulkhead?

A. I put in piles, and I have had no further trouble with it.

Q. The store building is working forward more

(Testimony of Isadore Goldstein.)

or less, Mr. Goldstein, isn't it?     A. No, sir.

Q. Hadn't it been doing that for some time?

A. No, sir.

Q. I am mistaken about that?

A. I think you are; yes.

Q. Haven't you got in braces so as to keep it from sliding?     A. I haven't, no, sir.

Mr. HELLENTHAL.—All right, that is all.

Redirect Examination.

(By Mr. RODEN.)

Q. You say you had a little slide back of your building there?     A. I did.

Q. When was that?

A. When I was putting up the building.

Q. How did it happen?

A. I had three streams of water out in the back there trying to sluice off a lot of clay off of the bedrock, and I and three other men were out there with three streams of water—firehose—sluicing off the dirt, and it slipped off the bedrock—we were pouring a great amount of water on to the bedrock, and it slipped down in the back of the building there and all three of us almost were killed at the time.

Q. Where did this dirt come from at the time, that slid in?

A. Come off of the bedrock right back of the store,—20 or 30 feet, I would say, back of the store.

Q. That was moved by three streams of water?

A. Yes, sir; we were trying to move it, and it

(Testimony of Isadore Goldstein.)

came down faster than we thought it would come, that's all.

Q. You say there was a man with you in the store at that time? A. Yes. [181]

Q. Who was the man? A. Louie Long.

Mr. RODEN.—That is all.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. When you put those three streams of water, Mr. Goldstein, there, I understand you to say that was in the bedrock—

A. We were washing the clay off of the bedrock.

Q. And the ground lying above the bedrock slipped down?

A. The ground that was on the bedrock came off.

Q. And you were working three nozzles at one time on the clay—on the bedrock?

A. We were working on the clay on top of bedrock.

Q. And that caused the ground to slip on the bedrock? A. Yes, sir.

Mr. HELLENTHAL.—That is all.

Q. (By Mr. RODEN.) And the ground began to slip right where you began to cut out?

A. The ground began to slip where we began to cut and everything on top came on over.

Mr. RODEN.—That is all.

(Witness excused.) [182]

**Testimony of Lewis Long, for Plaintiff.**

LEWIS LONG, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. What is your name?     A. Lewis Long.

Q. Where do you live?     A. Juneau.

Q. What is your business?

A. Oh, I work on boats mostly.

Q. Were you in Juneau on the 2d day of January, 1920?     A. Yes, sir.

Q. What were you doing on that day?

A. I wasn't doing anything.

Q. Were you in the store of Mr. Goldstein along about 9 or 10 o'clock?     A. Yes.

Q. Did anything unusual happen around about that time?

A. Yes; I was sitting in there talking, and I heard some water in the back of the store there.

Q. What did you do?

A. Izzy said, "Let's go back and see what is the matter"—it started to come in through the door, so we started to dig a hole underneath the floor so as to get the water to go underneath.

Q. How much water was coming, about?

A. I don't know—it was quite a stream.

Q. You were trying to dig a ditch there?

A. So the water would run underneath the floor.



(Testimony of Lewis Long.)

Q. Then what was the next thing that happened?

A. Well, we were digging out there for, I don't know, 10 or 15 minutes,—something like that—and all of a sudden Izzy yelled out, "Come on; let's beat it." We heard a crash, or something, so we started to run out through the store.

Q. Then what happened?

A. We run out on the sidewalk—of course it was all over then. [183]

Q. What was all over?      A. The slide.

Q. Where did the slide come from?

A. From the hill.

Q. And came through the store?      A. Yes.

Q. What material was carried through the store there?

A. Well, it was gravel, water and mud, and groceries and dry goods and all kinds of things.

Q. Where was this water and mud coming from, and rocks and gravel?

A. From the hill above there.

Q. After you got outside, then what did you do?

A. I heard screaming up on the top there, back of the store, sounded like some person hollering, and I went around, and I think Izzy did too, and we got on the top of Russell's store from the stairway that goes by the store up the hill.

Q. Russell's store is right next to Goldstein's store?      A. Yes, Jim Russell's.

Q. And you got on top of the roof there?

A. We got on top of the roof, and on top of all of the rubbish and lumber.

(Testimony of Lewis Long.)

Q. When you got up on top of the roof did you see any water coming from anywhere?

A. I looked to see where this stream was coming from, and I looked up the hill,—I was kind of leary that something else might come down—I looked up the hill and I saw some water spouting out.

Q. Where was this water coming from?

A. From a little shack, or some kind of a narrow thing, it looked to me.

Q. How much water was coming out of there, about?

A. It looked to me about what I would call a good sluice-head.

Q. Where was the water running to?

A. Well, it came down the hill towards this point where the slide started, and it run into some brushes, and I couldn't see [184] it any more until—I saw some water, although it didn't show very much until it got over the place where the slide started,—it spread out more than it did when it got out of that road.

Q. It broke after it left the top of the slide—it spread out? A. It came over the slide.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You were in the store, Mr. Long, just before the slide, were you? A. Yes, sir.

Q. And the water came down just as Izzy has

(Testimony of Lewis Long.)

testified to, in the back door, and you tried to get it to go under the store?   A. Yes, sir.

Q. And the slide hit you and you went out of the front door?   A. It didn't hit me.

Q. Hit the store, and you went out of the front door?   A. Yes, sir.

Q. And then you went out as you testified to?

Q. And within the next half hour you were out there and saw the different things you have stated; is that right?

A. It wasn't half an hour afterwards.

Q. How long afterwards?

A. From the time I turned back to go to the store until I got up on top of the buildings couldn't be more than three or four minutes.

Q. The main idea was to get this woman out?

A. No, I didn't get any woman out—I got the blacksmith out,—they called him—

Q. And after you got him out, then you took a look around, isn't that right? [185]

A. No, I didn't take any look around,—I was busy looking for another fellow.

Q. You were pretty busy for how long?

A. I don't know—it was quite a while—maybe an hour, probably.

Q. You didn't have much time to look around, Mr. Long?

A. No, I looked around just when I got on the roof—that is the time I saw the water.

Q. You took a look up the hill and you saw some

(Testimony of Lewis Long.)

water coming from the penstock and flume?

A. I guess it is the flume, I don't know.

Q. That shed?

A. That shed is where I saw it.

Q. And you saw water where the slide was?

A. Yes.

Q. But that particular water you didn't trace down the hill, did you, to the slide?

A. I saw it come down to some brush, then I didn't see it.

Q. You saw some water on top, and you saw it in the mud where you were standing, that is right, isn't it? A. I wasn't standing in the mud.

Q. The mud was right around the buildings?

A. I was standing on broken up houses.

Q. There was mud immediately behind them, wasn't there?

A. There was no mud on top of the lumber.

Q. Not on top, but around them?

A. Underneath, yes.

Q. You saw the water there and you saw the water up on the side of the mountain where the flume is? A. Yes.

Q. And between those places you don't know where the water was? A. No.

Q. You didn't study that out?

A. No, I didn't study that out.

Q. You don't know where the water ran between the place where it left the flume and where you saw it when it was around the [186] bottom of the buildings—that is right, isn't it?

(Testimony of Lewis Long.)

A. I saw the water before the slide down there at Izzy's store—that is the only time I saw the water, and it was at the back end of the store and we were trying to poke a hole there for it to run under the floor.

Q. That is the only time you really ever saw the water itself?     A. That is down there.

Q. Down there, yes; and then you saw it up on the hill after the slide?     A. After the slide, yes.

Q. And you took it for granted that that was the water that you saw in the first place—that is right, isn't it?     A. I think so, yes.

Q. You didn't stop to watch that hillside and figure out just where that water traveled through the brush, or anything of that kind, did you, Mr. Long?     A. No, I did not.

Q. You were busy with other things—getting people out of that wreck?

A. I looked up just when I got on top of this rubbish, when I saw the water coming out of the flume.

Q. Then you got busy getting the blacksmith out of the wreckage, isn't that right?     A. Yes, sir.

Q. You don't know where the water went to, only you saw water coming on top of the slide?

A. I don't know whether that was the water that came from the shack or not. I saw water coming to the point where the slide came from.

Q. You don't know where it came from?

A. No,—I couldn't swear it came from the chute or shack.

(Testimony of Lewis Long.)

Q. You didn't notice any water coming down the gulches, did you?

A. No, I didn't see any—I didn't look.

Mr. HELLENTHAL.—That is all. [187]

Redirect Examination.

(By Mr. RODEN.)

Q. Do you know any other place where that water might have come from except out of this little shed that you saw up there?

Mr. HELLENTHAL.—We object to that.

The COURT.—Ask him what he saw and what he knows.

Q. The only place you saw any water come from on top of the hill was out of this little shed?

A. Yes.

Q. And this little shed is at the end of the flume?

A. Yes, I guess it is.

Q. How long did you see that water running out of there, Mr. Long?

A. Well, it was running all the time when I was looking.

Q. How long was that?

A. Two or three minutes, I imagine, after I got on top of the slide.

Q. Then it kept on running for some little time?

A. I suppose it did because when we were digging on the second man we were down in a hole—I dug away a lot of lumber—I guess I was down 5 or 6 feet, and Mr. Forsythe, the patrolman, he was standing on the top of Russell's house watching us,



(Testimony of Lewis Long.)

and he said, "Watch out, boys; come out of there; there is another slide coming," and we looked up out of the hole and there was mud and water just below where the bridge was knocked out, coming pretty fast, but when it got to where we were it spread out and it didn't bother us any.

Q. This second little slide, did you see any water coming from that penstock then?

A. No, I didn't look up.

Q. Do you know how long the water was shut off, after that?     A. I do not.

Mr. RODEN.—That is all. [188]

Recross-examination.

(By Mr. HELLENTHAL.)

Q. When this bank broke off, Mr. Long, that is when you saw quite a lot of water coming right over the top of the slide, wasn't it,—right where the slide broke loose, the water was coming over there about that time in quite a big volume—quite a lot of water at that time?     A. After the slide?

Q. After the second chunk broke off—after these fellows yelled, "Look out for the slide"?

A. I didn't see no chunk—after Mr. Forsythe yelled, "Look out, boys, there is another slide coming," it was right below the bridge that was washed out,—it was about that high.

Q. At that time there was quite a lot of water and mud coming over the top of the slide where it had broken loose?

A. I didn't look up there that time.

(Testimony of Lewis Long.)

Q. You didn't look up and you don't know?

A. No.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

(Whereupon court adjourned until 2 P. M.)  
[189]

### AFTERNOON SESSION.

March 24, 1921, 2 P. M.

#### Testimony of Fred A. Sorri, for Plaintiff.

FRED A. SORRI, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

#### Direct Examination.

(By Mr. RODEN.)

Q. What is your name?      A. Fred A. Sorri.

Q. You live in Juneau?      A. I do.

Q. How long have you lived in Juneau, Mr. Sorri?

A. This has been my home since the spring of 1915.

Q. What is your business?

A. At the present time mail clerk.

Q. Did you know the Koski house which was located in the town of Juneau prior to the slide in January, 1920?

A. The old Koski house—I resided there before the new one was built.

Q. When was that built, Mr. Sorri?

(Testimony of Fred A. Sorri.)

A. As near as I remember, the latter part of April, 1915, and the early part of May.

Q. Did you have anything to do with the building of that house?

A. I was employed there from the time they laid the foundation until they completed painting.

Q. I wish you would describe to the Court and jury how the foundation was put there—what was done in the way of putting in a foundation?

A. Well, in preparing for this first we decided to level the ground out so that the whole house—bottom floor of the house would set level with the surface of the ground, but we found that we couldn't do so on account of the thickness of the surface—that is we ran into the rock bottom, and part of the [190] house—that is, the front end was set up on piles and the back end set up on the dirt, but we mucked down to the solid rock or boulders.

Q. How was the down channel uphill corner placed?

A. On the north side of the building, that is up next to the mountain, the west face of the building at the north end, we cleared out a place for the sidewalk, and then towards the south end of the building—that is, on the southwest corner, we mucked out a space of about 8 feet, I believe, high, and built a stairway.

Q. This cut that was made at the down channel corner, uphill corner, was about 8 feet high?

A. From the base—being vertical, from the base to the top of the cut.

(Testimony of Fred A. Sorri.)

Q. How far did this cut run up this way?

A. The north end of the building?

Q. Yes.

A. Up to about 25 feet, then it sloped off to nothing.

Q. So practically speaking, this corner, the up-channel corner and uphill corner, there was no digging done there at all?

A. Nothing only the exception of clearing a space for the sidewalk, which was about 4 feet wide.

Q. You just leveled that off a little bit?

A. Yes, sir.

Q. There wasn't any digging done?

A. No, sir.

Q. And the cut that was made at this corner ran back you say about 20 or 25 feet?

A. Yes.

Q. And would be about half the length of the building, practically speaking? A. Well, yes.

Q. And the front downhill side, I understand, was on piling?

A. The front, yes, sir.

Mr. RODEN.—You may cross-examine. [191]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You intended first to make the cut deep enough so you could put the whole house on the solid ground, Mr. Sorri?

A. Yes, sir, but we were hindered on account of solid rock.

(Testimony of Fred A. Sorri.)

Q. You made the cut until you got to bedrock and then you had to quit.

A. No; first we dug a hole to find out how far the bedrock would be, and we went about,—at the back end it varied—

Q. Some places was bedrock and some places wasn't, isn't that right?

A. It was all bedrock wherever you went because when we excavated for the place they used for a wash house we couldn't get—they wanted to excavate up to the face of the building, that is up to the mountain-side, but we couldn't on account of rock. There was only half of that used; the other half, that is the front of this washhouse, was about 15 feet wide, and they wanted to use the south end for storage purposes, and they couldn't on account of this rock.

Q. You took out the loose soil in the back until you got to where the rock was, so you couldn't make it any deeper—that is the idea, isn't it?

A. In excavating for the basement?

Q. No, not in excavating for the basement, but right in the back where the cut was the deepest, I mean.

A. There was no excavating done there at all because we couldn't get down to where we wanted to because the rock was too near the surface—that is, the south.

Q. The cut that was already there was as deep as it could go?     A. Yes, sir.

Q. And you had no more cutting to do?

(Testimony of Fred A. Sorri.)

A. No more.

Q. That had already been made by Mr. Lund and others that had been there—they made it as deep as it could be made? [192]

A. As deep as it could be made, on the south.

Q. That is the uphill side? A. Yes, sir.

Q. And the cut that was there, made by Mr. Lund and others, wasn't wide enough for the house so you had to extend it down channel way?

A. Yes, sir.

Q. That is right, isn't it? A. Yes, sir.

Q. And you extended it as far as the line of the lot?

A. Yes, sir—not as far as the line of the lot, no, sir; they built a brick wall about 5 feet beyond, towards the channel, from the face of the building—that is, we constructed a wall there of rock.

Q. That rock wall ran—

A. North, and stood at the foot of the building, about 5 feet from the base of the building, on the channel side.

Q. The first thing you did was to make the excavation wide enough for the house—that is the first thing you did, wasn't it—widen out the excavation there? A. Yes.

Q. And you know where the Bach house is?

A. The Bach house?

Q. Yes. A. No, sir.

Q. The house that they call the Bach house here?

A. No, sir.

Q. That is the house right down channel from the



(Testimony of Fred A. Sorri.)

Koski house—the down-channel side.

A. Larson's house—that is between the Koski house and the channel—the Larson house.

Q. The Larson house is right in front of the Koski house.     A. Yes, sir.

Q. The Bach house is the house standing on the side of the Koski [193] house.     A. Yes, sir.

Q. You get me now, don't you?

A. Yes, sir.

Q. The excavation you made was towards the Bach house, in that direction, down-channel direction?     A. Yes, sir.

Q. And you excavated there until the excavation was in your judgment about 8 feet deep?

A. Eight feet deep.

Q. Now, you didn't build any rock wall there, did you?

A. We built it out at the end of the house. The excavation was just in the southwest corner and it didn't extend out—that is on the south end of the house, the southern face of the house didn't come more than 8 feet—that is, it didn't project towards the channel more than 8 feet.

Q. That is 8 feet, you mean, from where the back of the cut was to where the slope of the hill was?

A. No; from the southwest corner of the hill.

Q. You mean the southeast corner, don't you?

A. Southeast, correct.

Q. From the southeast corner of the house?

A. Yes.

(Testimony of Fred A. Sorri.)

Q. The excavation would extend horizontally about how many feet, did you say?

A. Eight feet towards the channel.

Q. Then you had to cut behind that a space of about 4 feet more for a sidewalk, didn't you?

A. Yes, sir.

Q. So that made about 12 feet it extended from the edge of the excavation to the edge of the mountain as it originally was?

A. Approximately, yes, sir.

Q. Horizontally, I mean? A. Yes, sir. [194]

Q. And vertically the cut was about how much?

A. Approximately 8 feet—not more than that.

Q. That is your best recollection?

A. Yes, sir.

Q. You didn't measure it at the time?

A. I could judge it by my height and the height of the cut—it extended—

Q. That is your best recollection of it?

A. Yes, sir.

Q. The rock wall you built was built along the side of the back of the house, wasn't it?

A. Yes, sir, it was built there.

Q. It wasn't in the back or behind the house?

A. No, sir.

Q. There was no wall behind the house at all?

A. Not in the surface where it could be seen from the outside; no, sir.

Q. The wall that you built—what I mean now, Mr. Sorri, so as to get it straight, you made a cut that was about 25 feet lengthwise, running from the

(Testimony of Fred A. Sorri.)

corner where the Bach house was, on that side, down to where it met the gulch, isn't that right?

A. Not to where it met the gulch. The gulch extends about the north end of the house, and we would have had to cut out about 10 or 15 feet more. The cut only projected about 25 feet—that is, from that corner towards the north, and dipped off to where we didn't do any excavating, only the clearing of the space for the sidewalk.

Q. The foundation of the house was right on the level of the gulch, wasn't it, or about the level of the gulch? A. About, approximately, yes, sir.

Q. It might have been an inch or so off, but as near as a man could see it was right on the level of the gulch, the foundation of the house—that is right, isn't it? A. Yes, sir. [195]

Q. On the other side, toward the Bach house, there was a cut, to your recollection now, of about 8 feet deep? A. Yes, sir.

Q. That is right, isn't it? A. Yes, sir.

Q. Now, the distance between that corner and the gulch was 25 or 30 feet, wasn't it?

A. More than that—all of 60 feet from the bottom of the gulch.

Q. Sixty feet would you think?

A. From the bottom of the gulch, yes, sir.

Q. The lot was only 50 feet wide, wasn't it? I don't understand you, Mr. Sorri, exactly, or you don't understand me. I am speaking of the distance across the lot, along the side of the mountain—do you understand me now? A. Yes, sir.

(Testimony of Fred A. Sorri.)

Q. The gulch came right down the mountain-side?

A. Yes, sir.

Q. The ridge came right down the mountain-side, too? A. Yes, sir.

Q. That is right, isn't it? A. Yes, sir.

Q. Now the house ran about 45 feet along with the mountain—that is right, isn't it?

A. Yes, sir.

Q. Now, the excavation that was made wasn't the entire length of the house, was it?

A. No, sir.

Q. Because the gulch ran into the corner of the house?

A. Yes, sir; the bottom part of the gulch.

Q. And at that side the house stood on a level with the gulch, that is right?

A. It did, sir, only there was a slope.

Q. Then the excavation started from the gulch and ran this way, as I point my finger, towards the Bach house, didn't it? [196]

A. It did from about the middle of the building, yes, sir.

Q. From the north or gulch way?

A. Yes, sir.

Q. There was no excavation right where the gulch was? A. No, sir.

Q. And it kept getting bigger as it got toward the Bach house? A. Yes, sir.

Q. That is right? A. Yes, sir.

Q. On that side you built no wall?

A. No, sir.

(Testimony of Fred A. Sorri.)

Q. Built no wall at all?     A. No, sir.

Q. The wall you built was in the front of the house?

A. Yes, sir; just a small wall to keep the dirt from sliding.

Q. And it was in front of the house?

A. Yes, sir.

Q. Not any in the back of the house?

A. Not on the back. In the basement we put boards up there, 2 by 12's.

Q. There was a sidewalk built on the back of the house?     A. Yes, sir.

Q. And the bank sloped up from the sidewalk?

A. Yes, sir.

Q. Where you made the cut you didn't make it right straight up but it sloped back a little?

A. Yes, sir.

Q. And sloped right down to the edge of that sidewalk, isn't that right?     A. Yes, sir.

Mr. HELLENTHAL.—That is all. [197]

Redirect Examination.

(By Mr. RODEN.)

Q. Let me understand this clearly,—there seems to be some confusion. Supposing this is the Koski house, this is down channel, and this is the hill. I understand you to say that you made a cut here which at its deepest place was about 8 feet?

A. Yes, sir.

Q. Then this cut tapered out this way and got less and less until about 25 feet from here—

(Testimony of Fred A. Sorri.)

A. It disappeared altogether.

Q. It disappeared altogether, and the house here was standing on the level, and the gulch comes down here—somewhere in here?

A. Right in there, yes, sir.

Q. The gulch doesn't come to the Koski house at all?

A. The bottom of the gulch extends about 10 feet further north from the face of the house.

Q. Say about in here?

A. That is the bottom of the gulch.

Q. Have you seen any similar cuts around town here, Mr. Sorri?     A. Not to my recollection.

Mr. HELLENTHAL.—I object to that.

Mr. RODEN.—That is all.

(Witness excused.) [198]

**Testimony of N. G. Nelson, for Plaintiff.**

N. G. NELSON, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. What is your name?     A. N. G. Nelson.

Q. What is your business?     A. Merchant.

Q. How long have you been in the town of Juneau?     A. Since the fall of 1913.

Q. How long have you been engaged in the mercantile business?     A. Since that time.



(Testimony of N. G. Nelson.)

Q. What business were you engaged in prior to that time?    A. Mining.

Q. Where did you mine?

A. In the interior—Fairbanks.

Q. What kind of mining did you follow there, quartz mining or placer mining?

A. Well, placer mining.

Q. Where do you live at the present time, Mr. Nelson?

A. Upstairs over my store, on Front Street.

Q. Where is your store located with reference to the Goldstein building on Front Street?

A. Well, it is about a block up this way—I don't know exactly.

Q. It is north?

A. It is north about a block, I should judge.

Q. Your property is about a block north from the Goldstein building, and on the opposite side of the street?    A. Yes, opposite side of the street.

Q. How long have you lived in this particular place, Mr. Nelson?

A. I have made it our residence since October three years ago—no, two years ago last October, since I moved there.

Q. Did you reside in this place on January 2d, 1920? [199]    A. Yes, sir.

Q. And you had been residing there continuously for quite a considerable period of time prior to that time?    A. I had.

Q. Are you familiar with the location of the Alaska Juneau Gold Mining Company's flume and

(Testimony of N. G. Nelson.)

penstock on the sidehill of Mount Roberts?

A. No, I cannot say I am familiar with the flume.

Q. Well, do you know where it is located?

A. Yes, sir.

Q. On the 2d day of January, 1920, did you see any water coming out of this flume—that is, before the slide?

A. Why, I seen some water coming out of—I don't know whether it was out of the flume. I always, as I told my wife,—there was a salt water project or something like that—that is the only way I know—

Q. Did you see any water up there on the 2d day of January? A. Yes, sir.

Q. Before or after the slide? A. Before.

Q. Before the slide,—about how long before the slide?

A. Well, before I went down to the store in the morning.

Q. About what time in the morning would you say that would be?

A. Be about half-past eight, I guess.

Q. I show you Plaintiff's Exhibit "N," and ask you where you saw the water coming out of the works up there about the time you speak of?

A. Well, you cannot see it very well from here,—it was in here somewheres it come.

Q. Show that to the jury, please

A. Of course from my place you can see it

(Testimony of N. G. Nelson.)

better, but it is in here—all along here, and in back here.

Q. You saw this water coming out of there about half-past eight in the morning? [200]

A. No, I wouldn't say especially what time. I may have went down to the store at 9 o'clock, or something like that—I couldn't say.

Q. But anyhow, you know about when the slide happened, don't you? A. Yes.

Q. About how long before the slide occurred had you seen this water coming out of there?

A. Well, I seen it that morning, anyway. I couldn't say if I was upstairs an hour before or half an hour before.

Q. Could you say that you saw it at least half an hour before? A. No, I could not.

Q. You are positive you saw the water coming out of there, though?

A. Well, it was called to my attention that morning.

Q. How was it called to your attention?

A. Well, it was called to my attention this way, that Sunday the Missus watched the hillside, and she was watching the hillside every day since we were in the wreck, and we were in that wreck down below there, and she said, "That flume is going to bust." That was Sunday. I said, "That is no flume—that is the salt-water system."

Q. We do not care for the conversation.

A. That is the way the conversation came up,

(Testimony of N. G. Nelson.)

and she was watching that all the time, and that morning it still continued to run hard, and that morning before I went down I looked up on that hillside.

Q. How much water was coming down the hill at that time?

A. The same amount of water as you see in a sluice-head, at that distance—maybe four or five, for all I know.

Q. You cannot say how much?

A. No, I cannot.

Q. Was it a fair-sized stream?      A. Yes.

Q. Can you give us an idea how large it would be?

A. It was a round spout that comes out of a ditch,—of course, [201] it is quite a distance from our house up there.

Q. Could you see that spout?

A. Oh, yes, you can see the water.

The COURT.—What did the witness say, that he could see that spout, or that he could not see that spout—what was his answer?

Mr. RODEN.—He said he could see the water.

The COURT.—Yes, he said he could see the water. What is your answer—did you see the spout or did you not see the spout?

Mr. RODEN.—He hasn't said yet.

The COURT.—What do you mean—did you see the spout?

The WITNESS.—I didn't see no spout.

(Testimony of N. G. Nelson.)

Q. You didn't see any spout but you saw the water?

A. A sluice-head of water was coming out of there.

Q. At the time of the slide, Mr. Nelson, where were you?     A. I was in the store.

Q. Did you leave the store or go anywhere to observe what had happened?     A. I did.

Q. What did you do?

A. I ordered the Missus to take the baby and walk up the hill, and she walked up here somewhere; and I went down to Goldstein's place and there was quite a crowd there, and I went back to the store and opened up and went upstairs and watched things from the top of the roof.

Q. Did you again then look up there in that direction where you had seen this water?

A. I did.

Q. What did you see?

A. I seen the water was shut off there about half an hour or so after.

Q. Where was this water coming from with reference to the place where the water you saw before the slide was coming from?

A. It was coming from the same place as I showed you there on the picture. [202]

Q. Where was this water going to after it came out of there?

A. Along the place where the slide was.

Q. Did you see it go over there?

(Testimony of N. G. Nelson.)

A. Yes, sir.

Q. Now, had you seen this water come out of this same place at any time prior to this particular day?

A. It had been called to my attention, but I wouldn't say that I have seen it, no.

Q. You don't know whether you have seen it or not? A. No, I would not particularly say.

Q. Did you see it the day before?

A. I did.

Q. It was coming from the same place then?

A. Yes.

Q. Do you know whether you saw it two days before? A. I couldn't say.

Q. You are positive you saw it coming out of that same place the day before the slide?

A. I am positive it come out of there Sunday.

Q. That was the Sunday before the slide?

A. Yes, that was the Sunday before the slide.

Q. Do you know what day of the week it was when the slide happened? A. Monday.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You saw the water coming from the same place Sunday that it came from on Monday?

A. Yes, sir.

Q. Now, what time Sunday was it that you saw it?

A. Well, it was running—we are never out, so



(Testimony of N. G. Nelson.)

I couldn't say. The Missus was sitting in that window watching that water all the time on the hillside, and if there is anything [203] that looks suspicious, the first thing she asks me if we better move out, or something, so I wouldn't say what time it was.

Q. You don't remember what time Sunday it was?     A. No, sir.

Q. Whether it was morning, noon or night?

A. No, sir.

Q. You saw it again Monday forenoon?

A. Yes, sir.

Q. Do you know what time Monday forenoon it was?     A. Early in the morning.

Q. Early in the morning?

A. The first part of the morning, before I went down to the store.

Q. When you first went to the store?

A. Before I went down to the store.

Q. What time did you open the store usually?

A. Oh, around half-past eight or nine o'clock.

Q. Then it was some time before half-past eight that you saw it that morning?

A. Before half-past eight or nine, yes.

Q. That morning it was raining hard, wasn't it?

A. I believe it was raining hard for four or five days.

Q. That is your recollection,—it was raining hard on Sunday, the day before the slide, wasn't it?

A. I guess it was.

(Testimony of N. G. Nelson.)

Q. You are not sure about that, but that is your recollection any way?

A. That is my recollection.

Q. How wide was the stream that you saw; apparently how wide?

A. Like you see a good sluice-head of water in the distance coming out of a box, if you are used to seeing those things—I have no idea at all.

Q. It would be maybe 3 feet wide?

A. Well, when you say a sluice-head of water, it wouldn't be [204] that wide if it was compact.

Q. The water was coming right down the hill, wasn't it? A. It was shooting right down, yes.

Q. Right out from the mountain?

A. Right out from some sort of a house or something up there, it was coming out of.

Q. It was shooting out and coming right down the hill? A. Yes.

Q. So you could see it plain? A. Yes.

Q. It shot out a little ways, didn't it?

A. It shot out a little ways.

Q. And it shot out down the hill? A. Yes, sir.

Q. Away from the hill, the stream was running?

A. Of course it was shot out, but I don't know how far away from the hill.

Q. But I mean the spout was running away from the hill—down the hill—it was shooting?

A. Yes, sir.

Q. You cannot remember how wide the stream was? A. No, sir.

(Testimony of N. G. Nelson.)

Q. But it was shooting right out towards Front Street?     A. Yes, sir.

Q. How far was it falling from where it came out until it hit the ground?

A. Impossible for me to state because I wasn't there—I just seen this from a distance—I wouldn't say.

Q. Would you say 50, 60 or 75 feet?

A. I wouldn't say—I would know if I had been up there.

Q. I am asking you about how far it fell before it hit the ground?

A. I couldn't say—I wouldn't state—maybe hundreds of feet for all I know—that mountain may be straight up and down. [205]

Q. Anyhow it was going quite a long ways—it was shooting out quite a long ways before it hit the ground?

A. It might have shot there 6 or 10 feet, or 50 feet, if you can draw any conclusion from that—I don't know.

Q. You don't know anything about that?

A. No, I don't.

Q. How many streams did you see coming out at that time,—one or more?

A. Well, there is only one body of water there that come out.

Q. There was only one body that came out?

A. That came out there.

Q. You are sure of that?     A. I am sure of that.

Q. That there wasn't more than one stream com-

(Testimony of N. G. Nelson.)

ing out from the level of the flume?

A. I am certain of that.

Q. And that is the same stream you saw?

A. That is the same stream I saw.

Q. That is the same stream you saw on January 1st?     A. Yes.

Q. The day before the slide?

A. That is the same stream.

Q. At the same place?     A. At the same place.

Q. Where was that with reference to the mouth of the tunnel—do you know where the mouth of the tunnel is there?

A. It appears from our place the tunnel is over a little on that side, and this in here is set a little over on this side,—it may be that the tunnel runs directly into this place—I don't know—I couldn't say.

Q. Did it look that way to you from where you were?

A. It looked like the tunnel is in close neighborhood there.

Q. It looks like the tunnel is right close to it?

A. Yes.

Q. That is the way you saw it? [206]

A. Yes.

Q. You couldn't see the spout, you said?

A. You couldn't see if there is a big iron pipe or a wooden flume or anything else.

Q. You couldn't see that?

A. No, you couldn't see that.

Q. All that you could see was that there was a

(Testimony of N. G. Nelson.)

body of water spouting out?

A. It was spouting out.

Q. It was coming away from the mountain?

A. I couldn't say it was coming away from the mountain—it was coming down the mountain.

Q. And it was coming down towards Front Street?     A. Yes.

Q. And you don't know what happened to it after that?     A. I do not.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. RODEN.)

Q. When you spoke about a sluice-head, Mr. Nelson, what did you mean?

A. A sluice-head of water?

Q. Yes.

A. In the interior you have got to have a sluice-head of water, or two or three of them, to do any amount of work.

Q. What size box do you use in there for carrying a sluice-head of water?

A. We generally used to have—in the early days we had 12-inch boxes.

Q. What pitch—what grade?

A. Well, that all depended on the work, sometimes—how large dirt you are handling.

Q. But when you talk about a sluice-head, when you say a [207] sluice-head of water runs through the boxes—

A. There is a considerable body of water—I couldn't tell you by inches.

(Testimony of N. G. Nelson.)

Q. You don't know what the grade of it would be for ordinary medium size gold, what grade you would give the boxes?

A. In some places we might give it,—well, I wouldn't state.

Q. Ten inches would be about the average, wouldn't it?

A. No, that would be pretty much, I think, for single boxes.

Q. For medium fine gold?

A. Yes; just depends on how big dirt you have to work and what water you have.

Q. I mean on an average.

A. Of course I never did rig up any sluice boxes.

Mr. RODEN.—All right—that is all.

(Witness excused.) [208]

### **Testimony of John Jackson, for Plaintiff.**

JOHN JACKSON, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

#### **Direct Examination.**

(By Mr. RODEN.)

Q. What is your name? A. John Jackson.

Q. What is your business? A. Fisherman.

Q. How long have you been making Juneau your headquarters, Mr. Jackson?

A. Since the spring of 1914.

Q. Were you in Juneau on the day on which the slide occurred about which we are talking here?



(Testimony of John Jackson.)

A. Yes.

Q. What were you doing in the morning of that day?

A. Why, I went down the street, down to the City Float to look after the boat.

Q. About what time in the morning did you go down there?

A. Well, it was,—as close as I can remember, it was between 8 and 9 o'clock in the morning.

Q. At that time you passed the soda works down there and the Goldstein building? A. Yes.

Q. Did you then have occasion to look up on the mountain-side? A. Yes.

Q. In the direction of the Alaska Juneau flume and works up there? A. Yes.

Q. What did you see up there?

A. I saw a stream of water running down the hill-side.

Q. Where was this stream of water coming from?

A. Why, it looked like it came out of the flume, as far as I could see.

Q. What place in that flume was that coming from? . [209]

A. Just on the north side of the end of the tunnel.

Q. Just on the north side of the end of the tunnel? A. The way it looked to me.

Q. I show you Plaintiff's Exhibit "N" and ask you if you can about show where this water was coming from?

A. It looked like it came out right there, or somewhere around there.

(Testimony of John Jackson.)

Q. Show that place to the jury. Now, where was this water running to?

A. Why, it disappeared in the brush downhill there; that is the last I know of it.

Q. Now, where were you at the time of the slide?

A. I was back up to the New York Exchange.

Q. The New York Exchange? A. Yes.

Q. Did you walk down towards the slide after you heard about it? A. Yes.

Q. About how long would you say it was after the slide happened that you got down there again?

A. It couldn't have been over 10—5 or 10 minutes, because I went down as soon as I heard the fire-alarm,—we all went down there.

Q. I suppose you walked as fast as you could to get down there? A. Yes.

Q. Did you then see any water? A. Yes.

Q. Where was this water coming from?

A. The same place I saw it the first time.

Q. This time did you see any water running over the slide, where the slide had come down?

A. Yes.

Mr. RODEN.—You may cross-examine. [210]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. About 8 o'clock in the morning you say you saw the water coming from the flume there?

A. Yes, between 8 and 9.

Q. At that time how much water was there coming down, Mr. Jackson?

(Testimony of John Jackson.)

A. Well, there was quite a big stream of water—I couldn't say exactly.

Q. How wide was it?     A. Well—

Q. I mean as near as you—

A. I should judge 5 or 6 feet, the way it looked to me.

Q. About five or six feet wide?

A. Something like that.

Q. You couldn't say exactly, but that is your best judgment?     A. Yes.

Q. It was a thick stream but you couldn't tell how thick it was, of course?     A. No.

Q. Because you were looking right into it?

A. Yes.

Q. The stream was coming right towards you so you couldn't tell how thick it was, but you could tell the width of it?     A. Yes.

Q. That is right, isn't it?     A. That is right.

Q. And it was between 4 and 5 feet wide?

A. Yes.

Q. That was between 8 and 9 o'clock in the morning?     A. Yes.

Q. You saw the water there after the slide?

A. Yes.

Q. And there was about the same amount of water then, wasn't there?

A. About the same amount. [211]

Q. That water as it came down, about how far did it fall before it hit the ground?

A. I couldn't say just how far.

Q. 50 or 60 or 100 feet?     A. No.

(Testimony of John Jackson.)

Q. Not quite that far?

A. It didn't seem to be that high, no.

Q. About how high would you think?

A. I judge 15 or 20 feet—I couldn't say, though, for sure, but something like that.

Q. It was maybe not as much as 50 feet and more than 10 or 15? A. Yes.

Q. Somewhere between 10 and 15 and 50 feet would be about it, do you think?

A. Around 10 or 15, something like that—I couldn't say for sure.

Q. You didn't notice that particularly, I suppose? A. No.

Q. Now, the place where the water came from was right at the tunnel, where the tunnel comes out—right north of the tunnel, you said?

A. The way it looked to me it was a little north of the mouth of the tunnel.

Q. About how many feet?

A. That I couldn't say—that is pretty hard to say.

Q. A witness said it was about 15 feet—would that be about correct?

A. Well, I really couldn't say just how many feet.

Q. But it was in that neighborhood?

A. It was a little north of the mouth of the tunnel.

Q. In the neighborhood probably of 10, 15 or 20 feet? A. Probably.

Q. Somewhere around there—of course you couldn't tell exactly from a distance how many feet,

(Testimony of John Jackson.)

I know that, but in that neighborhood? [212]

A. Yes.

Q. That is right, isn't it? A. That is right.

Q. And you only saw one stream, didn't you?  
There was only one stream of water coming down?

A. There was only one stream of water coming down, yes.

Q. You didn't see any more streams? A. No.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

**Testimony of Martin Holst, for Plaintiff.**

MARTIN HOLST, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Direct Examination.**

(By Mr. RODEN.)

Q. Your name is Martin Holst?

A. Yes, sir; Martin Holst.

Q. Where do you live, Mr. Holst? A. Juneau.

Q. How long have you lived in the town of Juneau? A. 24 years.

Q. What is your business? A. Fishing.

Q. Were you in the town of Juneau on the 2d day of January, 1920? A. Yes.

Q. That is the day that the slide occurred?

A. Yes.

Q. What were you doing the morning of that day?

A. I was home, and I was going down to the boat

(Testimony of Martin Holst.)

—I had a boat laying at the side of the City Dock, and after breakfast I went down there—somewhere around 9 or 10 o'clock. [213]

Q. And you passed at the foot of the hill on which this slide later on occurred?

A. I passed along Front Street; yes.

Q. Did you have occasion to look up on the side-hill, in the direction of the flume and penstock of the Alaska Juneau Company?

A. Yes, I did—I looked up there.

Q. What did you see up there?

A. I saw a big stream of water coming out close to the tunnel there, where the tunnel goes into the mountain.

Q. Where was that stream going to?

A. That come right out and fell down the hill probably 40 or 50 or 60 feet and struck the ground in that brush below there, right by a big spruce tree there.

Q. Where were you at the time the slide happened?

A. I was going home again. I was down on the old Pacific Coast dock, down there.

Q. Did you turn back when you heard it?

A. I turned right back.

Q. Did you see any water coming out at that time? A. Yes.

Q. Where was this water coming from?

A. The same place.

Q. Did you see any water running over the face of the slide at that time? A. I did.



(Testimony of Martin Holst.)

Q. How much water was there, about?

A. There was the same kind of a stream—about 4 or 5 foot stream across, the way it looked.

Q. That was hitting right in the place of the slide? A. Yes.

Mr. RODEN.—You may cross-examine. [214]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. How long after the slide would you say it was that that water was running over the face of the slide?

A. About 5 minutes, I think, because it took me about 5 minutes to go from the Pacific Coast dock to the store—it didn't take me any longer. When I heard the crash I knew what happened, and so I ran up in the neighborhood of the slide.

Q. And so it was about 5 minutes after the slide when you got there? A. About that.

Q. Might have been a little longer?

A. Might have been a minute or two longer; yes.

Q. But when you came there there was quite a lot of water running over the top of the slide?

A. Yes.

Q. Whether it was 5 or 10 minutes after you wouldn't be sure? A. No.

Q. And about 10 o'clock in the morning, you think it was? A. Something like that.

Q. You looked up the hill and you saw a wide stream of water running out of the end of the flume?

A. Right near the mouth of the tunnel.

(Testimony of Martin Holst.)

Q. 10 or 15 feet from the mouth of the tunnel?

A. Looks like it—a few feet to the sheds of the tunnel there.

Q. It would be 10 feet—maybe 5 feet?

A. Something like that.

Q. Maybe 15 feet? A. I wouldn't be sure.

Q. It was about that distance, and the stream came right towards where you were standing so you could see the width of it? A. Yes.

Q. How wide was it? [215]

A. You couldn't tell to the foot, coming downhill, but it was a pretty good-sized stream—4 or 5 feet across—that is the way it would look.

Q. You couldn't tell how deep it was? A. No.

Q. Because it was coming towards you and you couldn't see through it? A. That is it.

Q. And that fell 50 or 60 feet and then hit the ground? A. Yes, sir.

Q. And that is the last you could see of it?

A. That is the last I could see of it.

Q. You only saw one stream coming down?

A. Just one stream.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

### **Testimony of Al Forsythe, for Plaintiff.**

AL FORSYTHE, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(Testimony of Al Forsythe.)

Direct Examination.

(By Mr. RODEN.)

Q. What is your full name, Mr. Forsythe?

A. Al Forsythe.

Q. What is your business?      A. Police officer.

Q. You live in the town of Juneau?      A. I do.

Q. Have lived here for some time?

A. Yes, sir.

Q. Were you a police officer on the 2d day of January, 1920?

A. Acting chief at that time. [216]

Q. You were acting chief of police. Where were you at the time of the slide?

A. At the time the slide happened I was in the Alaskan.

Q. That is the Alaskan Hotel?      A. Yes, sir.

Q. About how far is that from the slide, or the foot of the hill?      A. About a block and a half.

Q. It would take you how long to travel that block and a half?

A. Oh, I should judge a minute or two—as soon as I heard it I went down there.

Q. As soon as you heard the slide you went down there?      A. Yes, sir.

Q. What did you see when you got down there, Mr. Forsythe?

A. Why, I rushed up the stairway and went around the slide there, and of course I heard these screams of the people that were underneath the slide, and I also looked up to see if there was any more coming down before I would cross, so I went over

(Testimony of Al Forsythe.)

to the building there where we were trying to get this man out.

Q. Did you see any water around there at that time?    A. I did.

Q. Where did you see the water?

A. As I looked up the hill there the water was coming up over this place where the ground had broke, where the houses were.

Q. That is over back of what we call the head of the slide?    A. Yes, sir.

Q. Where was this water coming from?

A. The way it looked to me, from the flume.

Q. How much water was there, about, Mr. Forsythe?

A. Well, I couldn't say exactly how much it was—it looked to me like probably 2 or 3 feet—something like that.

Q. Now, did you then go on over the slide or over the slide material?

A. I was there on the slide. [217]

Q. What was the nature of the slide material—the stuff you stepped into?    A. You mean the mud?

Q. Yes.

A. It was all wet, and there was water still coming.

Q. Was it real wet and muddy?    A. Yes, sir.

Q. And the water was still running?

A. Yes, sir.

Q. Do you know how long that water continued to run?

(Testimony of Al Forsythe.)

A. Well, when we were digging out that one man that was in there between the Goldstein building, I seen this water still coming, and I hollered down to Sim Frieman to have this water shut off, so he said, "It is already done,"—or he said, "They have already called up, but I will call up again," so he went over somewhere, and come back and he said that the Alaska Juneau had answered that they had already sent a man up to shut the flume off.

Q. How long did the water continue to run out of the flume?

A. Well, I don't know—it probably was 15 minutes or half an hour after that.

Q. And then it stopped?      A. Yes, sir.

Mr. HELLENTHAL.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. When you got there, Mr. Forsythe, the slide had occurred and was all over—when you got to the slide?      A. Yes, sir.

Q. You were in the Alaskan Hotel at the time the slide happened?

A. I heard the rumble, and as soon as I heard the rumble I came out.

Q. And then you went down there, and you wouldn't say within a minute or two or five minutes when the water started to [218] come over the top of the slide—between the time the slide happened and the time the water started to come over the top of the slide?

(Testimony of Al Forsythe.)

A. It was probably a couple of minutes before I got down there.

Q. It probably was five minutes?

A. I looked right up at the head and the water was coming when I looked.

Q. You wouldn't say that was the first thing you did, or the second thing,—in all that excitement you wouldn't say just how long it was before you looked up, would you?

A. When I was going up the stairs there I looked right away—you see, I went up by the Windsor to cross over and I heard these people in there screaming, underneath this wreckage, and I looked up to see if there was any more danger so that I could cross over to where these bodies were,—I was afraid to go over there, so I looked up, and this water was coming then.

Q. This water that you first saw was coming over the top of the slide on the town side, wasn't it,—towards town?     A. Yes, sir.

Q. It wasn't over the middle but a little ways toward town, the first water you saw coming over the slide?

A. It was up on the hill where she had broke.

Q. And on the town side of where it had broken loose?     A. Yes, sir.

Q. That is right, isn't it?     A. Yes, sir.

Q. That was the first water you saw?

A. Yes, sir.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [219]



**Testimony of C. C. Nichols, for Plaintiff.**

C. C. NICHOLS, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

**Direct Examination.**

(By Mr. RODEN.)

Q. Your name is C. C. Nichols?      A. Yes, sir.

Q. You live in Juneau, Mr. Nichols?

A. Yes, sir.

Q. How long have you lived in Juneau?

A. Since 1908.

Q. Were you in Juneau on January 2d, 1920, when the slide occurred?      A. Yes, sir.

Q. Where were you at the time of the slide?

A. Down on the Admiral Dock.

Q. Was your attention attracted to the slide?

A. Yes, by the noise.

Q. As soon as you heard the noise what did you do?

A. I ran over to the door and looked up at it.

Q. What did you see there?

A. Why, I just see the houses come waltzing down the hill.

Q. Did you see any water up there?

A. Yes, sir.

Q. Where was the water?

A. Well, there was some coming over the hump up there, was the only water I noticed. There may have been some other streams there but I didn't notice them.

(Testimony of C. C. Nichols.)

Q. What did you do after that?

A. As soon as I saw the slide I ran in the office and got my camera and ran upstairs and took a picture of it.

Q. How long would you say that it took you from the time you heard the slide until you got up there to take the picture? [220]

A. I don't know exactly how many minutes it was—it was inside of ten minutes, I know.

Q. You were moving about as fast as you could, were you?     A. Yes, I was running.

Q. Describe in detail how far you had to travel?

A. Well, I had to run back to the office—that is about 40 feet, I guess; and then I had to run outside again, and then upstairs.

Q. When you saw that water the first time, that was how long after you heard the crash of the houses?

A. Well, I saw it coming down there as soon as I heard the slide—I just took it all in at a glance.

Q. You just saw the whole mass move, did you?

A. Part of it I did—of course I didn't see it start.

Q. At that time you also saw the water?

A. Yes, sir.

Q. The water was coming over the slide?

A. Yes, sir.

Mr. HELLENTHAL.—Let the witness testify.

Q. What kind of camera did you use, Mr. Nichols, to take the picture?

A. No. 3—A Eastman.

(Testimony of C. C. Nichols.)

Q. What kind of a day was it for taking pictures?

A. It wasn't very good—the sun wasn't shining—kind of a drizzling rain; if I remember right, the day was rather dark.

Q. Is this the picture you took?      A. Yes, sir.

Q. What does that picture show?

A. It shows the slide—where the slide occurred, and the water.

Q. Do you know whether that picture has ever been enlarged, Mr. Nichols?

A. No, I don't know whether it has or not.

Q. I show you this one.

Mr. RODEN.—Will you admit that this is an enlargement of the same picture, Mr. Hellenthal?  
[221]

Mr. HELLENTHAL.—I have no objection to the enlargement—it looks to me like the same thing,—if counsel says it is, I will take his word for it, anyway.

Mr. RODEN.—As near as I know, it is an enlargement.

Mr. HELLENTHAL.—No objection.

Mr. RODEN.—I desire to introduce this in evidence then.

Mr. HELLENTHAL.—That is all right.

(Whereupon said picture was received in evidence and marked Plaintiff's Exhibit "O.")

Mr. RODEN.—That is all.

(Testimony of C. C. Nichols.)

Cross-examination.

(By Mr. HELLENTHAL.)

Q. That picture, Mr. Nichols, represents the condition at the time you took it? A. Yes, sir.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

**Testimony of Beatrice Watts, for Plaintiff.**

BEATRICE WATTS, called as a witness for the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. Will you state your name, Miss Watts, please?

A. Beatrice Watts.

Q. How long have you lived in the town of Juneau, Miss Watts? A. Five years.

Q. On the day of the slide where were you?

A. On the Admiral dock, in the office.

Q. You were in the employ of the Admiral Steamship Company? A. Yes, sir. [222]

Q. How was your attention called to the slide?

A. By the rumbling noise of the slide.

Q. What did you do, Miss Watts, after you heard the noise? A. I ran out.

Q. And I suppose you looked in the direction of the slide? A. Yes, sir.

Q. What did you see there?

A. Well, by the time I got outside the slide

(Testimony of Beatrice Watts.)

had got down the hill, and I saw the water coming down the sidehill.

Q. Where was this water coming from, Miss Watts, with reference to the ground which had given way?

A. It was coming right over the slide.

Q. And you went out there to see, I suppose, as fast as you possibly could after you heard the noise? A. Yes, sir.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You were pretty excited, weren't you, Miss Watts, at the time? A. Yes, sir.

Q. And you came downstairs and you saw the slide—you didn't see the slide from upstairs—you came downstairs and saw it from downstairs?

A. I was in the office.

Q. In the office downstairs? A. Yes, sir.

Q. And you went out in front? A. Yes, sir.

Q. The buildings were all down at the time you got there, weren't they? A. Yes, sir.

Q. You don't know just how long the slide had been over? A. No. [223]

Q. You couldn't tell that? A. No.

Q. You saw water coming down the sidehill, and that entered the slide area on the Juneau side of where it had broken loose, didn't it?

A. What was that, please?

Q. The place where you saw the water running

(Testimony of Beatrice Watts.)

on to the slide was near the top of the Juneau side of the slide—on the Juneau side and not down-channel side, that is right, isn't it, as you remember it?

A. Right over the top, yes, sir.

Q. Your best recollection is that it was on the side towards Juneau—over the middle of the top towards the Juneau side, or wouldn't you be sure about that?

A. I wouldn't be sure.

Q. You don't know just exactly where it was coming over? A. No, sir.

Q. And you don't know just exactly how much water there was running there? A. No, sir.

Q. You watched it for quite a while, Miss Watts?

A. Yes, sir.

Q. You watched it for probably half an hour, did you?

A. I watched it longer than that—I watched it all the time that the excitement was around.

Mr. HELLENTHAL.—All right, that is all.

Q. (By Mr. RODEN.) This water, to the best of your recollection, you say was coming over the top of the slide? A. Yes, sir.

Mr. RODEN.—That is all.

(Witness excused.) [224]

### **Testimony of Sam Simonson, for Plaintiff.**

SAM SIMONSON, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:



(Testimony of Sam Simonson.)

Direct Examination.

(By Mr. RODEN.)

Q. Your name is Sam Simonson?      A. Yes, sir.

Q. What is your business?

A. Prospecting, mining, fishing and working.

Q. How long have you been in the Territory of Alaska, Mr. Simonson?      A. Since 1906.

Q. Where were you engaged in the business of mining?

A. In Iditarod, Kuskokwim, here, in Tolovana, and different places.

Q. Where were you on January 2, 1920, the day of the slide?      A. I was in Juneau.

Q. What were you doing about that time?

A. I was getting ready to go to Sitka the 2d day of January on the Estebeth, working for the United States Land Office,—the surveyors.

Q. Now, on that day did you pass up and down Front Street, on the morning of the slide?

A. I just come from the City Dock. I had been down with some few small things and I had to go back; and I came back again and went into Dave Housel's and had a cigar, walked out of Dave Housel's, walked up as far as the Coliseum and met a friend of mine there and stopped and talked, and I stood with my back toward the curb and he stood facing me, and all of a sudden he says, "Hey, there is a big body of water coming down that hill."

Q. Where was this water coming down this hill?

A. Coming down over the hog-back.

(Testimony of Sam Simonson.)

Q. Where was it coming from?

A. It was coming from up the flume there. [225]

Q. From what part of the flume?

A. Right close to the—I can show you here better than I can explain it, I guess—it came right, to me, looked to me like there was houses there, or a shed or something.

Q. I show you Plaintiff's Exhibit "N" and ask you to show about where this water was coming from.

A. Right here—here is where I seen it coming from—it come right straight down this way.

Q. Show the place to the jury where you saw it come from. A. Right down this way.

Q. How long was that before the slide happened?

A. Well, just as I turned around he hollered, "There comes the house," so it was just long enough for me to turn right around and see this side of the big yellow building start to come.

Q. Do you know whose building that was?

A. No, I don't know whose building that was, only otherwise I heard afterwards they called it Koseki's house, or Kloski house, or whatever it is.

Q. Who was the man who was with you?

A. Chris Michaelson.

Q. What did you do as soon as you saw and heard all of this?

A. We started on the run, both of us, and run down to where the slide was, where it come out just below the Goldstein building, where that old laundry is, and kept on going—we run up through the alley-

(Testimony of Sam Simonson.)

way between the old second-hand store, Pete's, and by the stairs, and in on where the slide was, from the stairs.

Q. What material did you see there then, where this slide was?

A. Broken up boards and water and dirt.

Q. What was the condition of the dirt?

A. Nothing but mud,—water and mud, that was all.

Q. What was the color of the water that you saw in there?     A. Muddy water. [226]

Q. Was the water still running when you got there?

A. The water was still running from up the hill, yes, because as I stood there—we stood there looking, there was a woman come running out of the stuff there, and she was all muddied up, and blood was running off her cheek, and she was screaming; and just where I stood I heard somebody moaning right in under me, and I started in to tear off the boards and stuff and he was quite a ways down—I could not get at it, and there was a couple of more fellows there with me, and just as we started they hollered out on the street, "Look out, there is another slide coming." I never stopped to look or anything. I jumped and just got down when the little houses come down on the street.

Q. How long did the water continue to run, about?

A. Well, I should say from 20 minutes to half an hour after the slide.

(Testimony of Sam Simonson.)

Q. And where was this water coming from with reference to the water that you saw just at the time of the slide?

Mr. HELLENTHAL.—Let him say if he knows—if he saw it.

Q. Well, did you see where this water was coming from then—that is, after the slide?      A. Yes.

Q. Where was it coming from?

A. Because after I jumped down on the street I wasn't able to go back up there again because I jarred my whole body. I am a pretty heavy man and I landed right on my heels and ankles and they got pretty sore, so that is the reason I stood right in front of the whole thing and seen it.

Q. Where was the water coming from?

A. The water was coming from the same place I showed you on the picture.

Mr. RODEN.—That is all. [227]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. After you got down on the street after the alarm came that there was another slide coming, that was the first time you had occasion to see where the water was coming from,—I mean after you were on the street when you and that man were talking?

A. That time, and I seen it when I was on the slide too.

Q. When you were on the slide you didn't look up and see any water coming from there?      A. I did.

Q. You couldn't see the penstock from there?

(Testimony of Sam Simonson.)

A. I couldn't see the penstock but I saw the water coming over the slide.

Q. Did you see water coming over the top of the hog-back before you got on the street?

A. No; from the street I could see that.

Q. You didn't see any water running over the hog-back and the top of the slide until you got on the street,—I mean the place where the slide had broken loose,—you didn't see that until you got on the street; isn't that right?

A. Where the slide had broke loose, I couldn't see the water running over there from where I stood on the wreck, yes.

Q. How long after the slide was it that you saw the water running—15 minutes, 20 minutes or 5 minutes?

A. It would be between 20 minutes and half an hour.

Q. The first time that you saw it it wouldn't be that long, would it?      A. What do you mean?

Q. The first time you saw it running over the hog-back after the slide was between 5 and 10 minutes after the slide had happened, wasn't it, or wouldn't you want to say now how long it was?

A. I have got to get you first,—I don't understand now what you mean. I told you the first time I see any water was when the slide started. [228]

Q. Before the slide started or just at the time it started?

A. Just at the time it started. All I had time to do was to look around and look from the curb and



(Testimony of Sam Simonson.)

I seen the slide and the house come.

Q. And that time you saw the water up on top of the hill coming from the flume? A. Yes.

Q. That is all the water you saw at that time?

A. No, I seen more water—I seen water right on the slide too.

Q. On the slide?

A. Yes, right where the slide broke off. A lump of dirt broke away from the rest of it up above—the water come over that and hit that slide.

Q. Was that right after the slide happened?

A. Yes, after the slide happened.

Q. Immediately after, I am talking about?

A. Immediately after.

Q. You saw a flow of water at that place where it had broken loose right after the slide happened?

A. Why, yes,—I couldn't help seeing it.

Q. That is true, isn't it? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. How much water did you see?

A. Why, just about a sluice-head of water.

Q. And you saw that there at that time?

A. I seen it right along.

Q. Wait a minute—let's see. First, when you looked at it and first saw it break loose did you see a sluice-head of water running over the apex of that slide?

A. Yes; I saw it from the first time I turned and run down on the sidewalk—that is the first time, and when I run down I couldn't see it, when I was running, because the houses [229] were in my



Testimony of Sam. Simmons.

was there, and then when I got down there and looked again I see it.

Q. And that water was coming right over the middle? A. Yes, sir.

Q. A big sheet-head of water? A. Yes, sir.

Q. And it was coming down right after the buildings had gone down, was it? A. Yes, sir.

Q. You are as sure of that as anything else you have testified to? A. Yes, sir.

Q. Did you see any water in the gutters?

A. No, sir; I didn't have no time to look for any water or any other thing but that slide—that is all my attention was called to.

Q. That water you saw coming from the flume was coming right out of the flume?

A. Why, I couldn't tell you whether it come out of the flume or not, but it looked to me like it was a flume, because I will tell you, I seen two or three men up there working after I stood out in the street and they were hammering and working up there at the same place that this water come from.

Q. Now, there was about a sheet-head up there, wasn't there?

A. It looked to be just about a sheet-head.

Q. A sheet-head everywhere?

A. Just about that.

Q. And you are sure at that time, just before the slide happened, you turned around and saw that water, then the slide came, and immediately after the slide you saw a sheet-head come right over the apex? A. There was water still running there.

(Testimony of Sam Simonson.)

I seen the slide and the house come.

Q. And that time you saw the water up on top of the hill coming from the flume? A. Yes.

Q. That is all the water you saw at that time?

A. No, I seen more water—I seen water right on the slide too.

Q. On the slide?

A. Yes, right where the slide broke off. A lump of dirt broke away from the rest of it up above—the water come over that and hit that slide.

Q. Was that right after the slide happened?

A. Yes, after the slide happened.

Q. Immediately after, I am talking about?

A. Immediately after.

Q. You saw a flow of water at that place where it had broken loose right after the slide happened?

A. Why, yes,—I couldn't help seeing it.

Q. That is true, isn't it? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. How much water did you see?

A. Why, just about a sluice-head of water.

Q. And you saw that there at that time?

A. I seen it right along.

Q. Wait a minute—let's see. First, when you looked at it and first saw it break loose did you see a sluice-head of water running over the apex of that slide?

A. Yes; I saw it from the first time I turned and run down on the sidewalk—that is the first time, and when I run down I couldn't see it, when I was running, because the houses [229] were in my

(Testimony of Sam Simonson.)

way then, and then when I got down there and looked again I see it.

Q. And that water was coming right over the middle?     A. Yes, sir.

Q. A big sluice-head of water?     A. Yes, sir.

Q. And it was coming down right after the buildings had gone down, was it?     A. Yes, sir.

Q. You are as sure of that as anything else you have testified to?     A. Yes, sir.

Q. Did you see any water in the gulches?

A. No, sir; I didn't have no time to look for any water or any other thing but that slide—that is all my attention was called to.

Q. That water you saw coming from the flume was coming right out of the flume?

A. Why, I couldn't tell you whether it come out of the flume or not, but it looked to me like it was a flume, because I will tell you, I seen two or three men up there working after I stood out on the street, and they were hammering and working up there at the same place that this water come from.

Q. Now, there was about a sluice-head up there, wasn't there?

A. It looked to be just about a sluice-head.

Q. A sluice-head everywhere?

A. Just about that.

Q. And you are sure at that time, just before the slide happened, you turned around and saw that water, then the slide came, and immediately after the slide you saw a sluice-head come right over the apex?     A. There was water still running there.

(Testimony of Sam Simonson.)

Mr. HELLENTHAL.—All right, that is all.  
[230]

Redirect Examination.

(By Mr. RODEN.)

Q. When you speak about a sluice-head of water, what do you mean—what is a sluice-head of water?

A. A sluice-head of water is—I can explain it to you in a way, where we use the boxes and use a sluice-head of water in them.

Q. That is what we want.

A. The standard kind of box is a 12-inch box, 12 foot long; you have a grade a foot—from 10 to 12 inches,—it all depends—some people have an idea that 10 inches is better than 12, and others again that 12 is better than 10. You call it a 10-inch grade for a box length—that is, 12-foot long; and in that box you have riffles that will probably take up about two or three inches down solid to the bottom of the box, and in there runs about—oh, I would say, between 7 and 8 inches of water—that is what we call a sluice-head of water.

Q. The grade is practically speaking about 10 inches to 12 feet?

A. Yes, 10 inches to 12 feet or 12 inches to 12 feet. If you have 12 inches to 12 feet you have to have so many more to shovel in because there is so much more force on the water.

Q. You say you heard men hammering up there?

A. Yes, sir.

Q. How soon after the slide was that, Mr. Simonson?

(Testimony of Sam Simonson.)

A. That was when I was down on the street,—I probably was on the slide, I should say probably 7 or 8 minutes before they hollered there; then I jumped down here and fell around on the street there—I could hardly stand on my legs, they were aching so, and I was sitting on the rail there between the bottle works and that other building, and looked up the hill, and then I seen two or three men—I think it was three men—and they were up there, and they were hammering and fixing it; and I looked at them for a little while, and a few minutes after that the water stopped running over.

Mr. RODEN.—That is all. [231]

Q. (By Mr. HELLENTHAL.) That water was all running in one stream, wasn't it, over the top when you saw it?

A. Yes, sir; all in one stream.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

**Testimony of Chris. Michaelson, for Plaintiff.**

CHRIS. MICHAELSON, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. What is your first name, Mr. Michaelson?

A. Chris Michaelson.

Q. What is your business?      A. Fisherman.

Q. How long have you been in the territory of



(Testimony of Chris. Michaelson.)

Alaska, Mr. Michaelson?     A. About 7 years.

Q. And during that time you have following the fishing business generally, have you?

A. Yes, fishing all the time.

Q. Were you in the town of Juneau on the day of the slide?     A. Yes, I was.

Q. What were you doing in the morning?

A. I just left the boat that was laying down at the lower city float—I was watching the boat the whole winter for my partner, who was in Frisco.

Q. That is the far dock down there?

A. Just this side of the oil dock.

Q. Did you go down there on that day, that morning?

A. No, I come from there. I slept on the boat, and took care of it. It was raining and I had my oil skins on—it wasn't raining extra heavy—just what we call Alaska weather—Alaska rain— [232] and I went into Frank's place, and then I went up to the post office and asked for mail because I expected a letter from my partner.

Q. When you passed Goldstein's place there, around about in there, did you have occasion to look up on the sidehill?

A. No, I didn't take no notice of it. I went straight on up to the postoffice.

Q. And then did you come back again?

A. Then I come back and I stopped right outside of the water fountain at the show there, and I met Sam there,—I knowed him for 15 or 20 years, and we always stopped and talked.



(Testimony of Chris. Michaelson.)

Q. You stopped right at the fountain there right in front of the Coliseum? A. Yes.

Q. Whom did you meet there?

A. Sam Simonson.

Q. All right—you had a talk with him?

A. Yes; and he stood with his back to the street and I stood facing this way, and I just happened to throw my eyes that way and I said to Sam, "Look at the body of water coming down the hog-back."

Q. Where was this water coming from, as near as you could tell then?

A. I don't know exactly, but the way it looks to me it comes from some kind of a box up there, but I don't know whether it was a shed or what it was.

Q. You called his attention to the water?

A. Yes.

Q. Then what happened?

A. Then I saw this steel tower going around, and then I saw a little house start to swing right around, and then we started to run.

Q. Where did you run to?

A. To the Goldstein building because it looks to me it was going [233] to strike there. I saw the, two houses and the bridge go out, running and then I got to Goldstein's place and the whole shooting-match just hitting the back of it, and I ran the other way and the first I met was a little lady, dirt from head to feet and bleeding from the cheek.

Q. Did you see any water coming over this material?

(Testimony of Chris. Michaelson.)

A. Yes, I saw 8 or 10 feet of water in a stream 3 feet deep in the back of Goldstein's place. I waded across that stream with a man on my back—the second man taken to the hospital.

Q. Did you go to the hospital with the man?

A. I took him right to the hospital, and put him on the stretcher.

Q. Did you come back again to the slide?

A. I rode half way in an automobile and walked the other half.

Q. How long was it from the time of the slide until you came back?

A. I couldn't tell you exactly—it was after twelve o'clock, anyway.

Q. How was the water condition then?

A. When I come back I come back exactly the same way and there wasn't a foot of water or dirt around there, but there was dark brown muddy stuff running the same way. It wasn't a foot thick; when I carried the man across it hit me here—I had rubber boots on.

Mr. RODEN.—You may cross-examine.

Mr. HELLENTHAL.—No questions.

(Witness excused.) [234]

### **Testimony of Robert Kirk, for Plaintiff.**

ROBERT KIRK, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(Testimony of Robert Kirk.)

Direct Examination.

(By Mr. RODEN.)

Q. You may state your name.

A. Robert Kirk.

Q. Where do you live, Mr. Kirk?

A. I live up on Swede Hill.

Q. How long have you lived up there?

A. Oh, off and on the last two years I have been there.

Q. Where were you living with reference to the Koski house?

A. I guess I am living maybe about 300 yards this side of it.

Q. Were you living up there at the time of the slide?     A. Yes.

Q. Now, on the morning of the slide, before the slide, did you leave your house?     A. Yes.

Q. Where did you go to?

A. I went over to Messerschmidt's bakery.

Q. And about what time did you go up there to the bakery?

A. Well, I should judge it would be about 10 o'clock.

Q. Did you have occasion to look up on the side-hill about that time in the direction of the flume and penstock?

A. No, I didn't look up on the hill.

Q. Did you come back again to your house?

A. Yes.

Q. How long did you stay up town, about?

A. Oh, I guess I was gone about 15 minutes.

(Testimony of Robert Kirk.)

Q. Then did you have occasion to look up?

A. Yes.

Q. What did you see?

A. Well, when I was in the door I saw that water coming out of the flume. [235]

Q. Where was this water coming from?

A. Well, it was coming out of some flume up there.

Q. Whereabout with reference to the location of the Koski house?

A. It was coming right over and hitting sort of a hog-back there on the side of the hill.

Q. Where were you when you saw that?

A. Right in the cabin.

Q. Do you remember when the slide happened?

A. I should judge it would be somewhere around about 11 o'clock.

Q. About how much water did you see come out of there at that time,—not at the time of the slide, but I mean at the time you came back from the bake-shop?

A. Oh, I don't know—maybe about 3 feet of water was coming over there—that is, about 3 feet wide.

Q. You don't know how thick?

A. No, I don't.

Q. Where were you at the time of the slide?

A. I was right there at the house.

Q. Did you do anything—go out and take a look?

A. I was outside of the door—I heard *and* noise and I heard the crashing come along.

(Testimony of Robert Kirk.)

Q. Then what did you do?

A. I run up the steps on Gastineau Avenue there to where the houses come through the bridge.

Q. What did you see there in the way of water?

A. The water was coming down there.

Q. Where was it coming down from?

A. Just where the slide had come out.

Q. And did you stay there for any length of time?

A. No, I stood there and come on back by the same way because I couldn't go down that hill—there was too much water.

Q. How long did this water continue to run?

A. Well, I should judge about half an hour afterwards it was shut off. [236]

Q. Did you go over the slide area—in the slide mass?

A. Yes, I was over and helped to take some of the people up—I took a man up to the hospital, by the name of Callendar, I believe his name was—Emil Callendar—I took him out of the back of the slide.

Q. What material did you take him out of?

A. Boards and muck and gravel.

Q. Any water in there?

A. Oh, plenty of water, yes.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Did you see any water coming out of the bank from the bedrock after it happened?

A. Yes; there was water coming out of there

(Testimony of Robert Kirk.)

when I went up to Gastineau Avenue, where the slide had come out—water was still hitting that place.

Q. There was water coming out of the bank itself where the slide had broken loose?

A. Where the apex was, the water was hitting there.

Q. Tell me what the word apex means.

A. Where that cavity was.

Q. Tell me what the word apex means.

A. Where that cavity, the slide or bank, had given way.

Q. You mean by the apex the place where there was kind of a cup-shape, where the bottom of the cup broke loose?

A. Where the hog-back had went.

Q. Now, what does apex mean—the word apex?

A. That is what I would call it?

Q. What does it mean?

A. That is all the meaning I would give to it.

Q. Where did you first hear that word?

A. I have heard it and read of it lots of times.

[237]

Q. Now, you know what it means, don't you?

A. That is what I would figure it out to be.

Q. Don't you think that some fellow that has had a better education than you told you this water came over the apex of the slide—don't you think that is about it? A. No.

Q. You have known that word all of your life, haven't you?



(Testimony of Robert Kirk.)

A. I am not totally ignorant about the word.

Q. You don't know what the word means, now, do you?    A. That is my definition of it.

Q. What is your definition of it?

A. That place where the hog-back had come out—where that slide was—I call it apex.

Q. What does the word apex mean?

A. That is the meaning—all I can give for it.

Q. Did you see any water coming out of the bank, at the upper end of where the slide had broken loose, off the bedrock?

A. No, that water was just about hitting the edge where the dirt had come out—the water was running over that—this cavity that was there.

Q. The water was running over that?    A. Yes.

Q. The water came out of that draw right at the side of the slide, didn't it?    A. No.

Q. Came right over the top of it?    A. Yes.

Q. How long after the slide was that—10 minutes, 5 minutes—15 minutes.

A. No, after the slide it took me, I guess, about two minutes to go up there.

Q. Where were you when the slide happened?

A. Right in my cabin.

Q. In your cabin? [238]    A. Yes, sir.

Q. Did you see the slide?

A. Yes, I saw the houses coming.

Q. Where did you see the houses?

A. Right from where I was.

Q. Where were they when you first saw them?

A. Right outside of my cabin there.

(Testimony of Robert Kirk.)

Q. You were right outside of your cabin and you were looking at the houses?

A. I seen them coming—I seen one house coming and I went up to Gastineau Avenue—I only had about two minutes walk.

Q. You didn't run right into the ground where it was sliding—didn't you stop and see how wide that slide was going to be?

A. They were all gone by the time I got there—they were all down to Goldstein's.

Q. Everything was perfectly safe?

A. Lots of people were there.

Q. What was the first thing you did? Did you look at the stuff that was gone, or look at the water?

A. You couldn't help but see—there was still debris and water and everything running down there.

Q. Yes, running down over the slide—it was all muddy down there, wasn't it? A. Yes.

Q. And the water was running down over the slide? A. Yes.

Q. You saw that first?

A. There was nothing left there—the Koski house was the first house that went, and it took part of another house and the bridge with it, and still went on.

Q. You examined the business, and a little later you looked up the hill and you saw water there, is that right? A. That was at least two minutes.

Q. Maybe five? [239]

(Testimony of Robert Kirk.)

A. It couldn't have been over 2 or 3 minutes—it wouldn't take me any longer than that to go 200 yards.

Q. You don't know now just exactly how long it would be after you came to the slide that you saw the water coming over what you call the apex, do you?

A. The water still continued to come over there.

Q. You don't know how long it was before you saw it coming over there, do you?

A. Previous to the slide?

Q. No, after the slide happened, Mr. Kirk.

A. Yes—probably half an hour.

Q. You saw it before—that wasn't the first time you saw it?

A. No, I saw it before the slide.

Q. Yes, up on the hill?     A. Yes.

Q. But after the slide happened, I mean, you saw it coming over the apex. Now, when did you see it coming over the apex?

A. When I went up on Gastineau Avenue—that is three minutes afterwards.

Q. You didn't look up there the first thing to look at the water—you looked down to Goldstein's to see what had happened to the buildings, first, didn't you?

A. I looked at that side—you have to walk along Gastineau Avenue and you look along on that side and then on this side—you couldn't help it.

Q. And you used one eye to see the buildings and one eye to see the water?

(Testimony of Robert Kirk.)

A. No, I saw both sides.

Q. How big a stream was that coming over there?

A. Oh, I would judge 3 feet wide.

Q. Was it a clear stream 3 feet wide coming over the top? A. Yes, sir.

Q. Like water falls? A. Yes.

Q. A regular water fall? [240] A. Yes, sir.

Q. Only one stream? A. That is all I saw.

Q. One stream 3 feet wide? A. Yes, sir.

Q. Running over there like a water fall?

A. Yes, sir.

Q. Is that what you saw? A. Yes, sir.

Q. When you first saw the water you saw that?

A. Yes, sir.

Q. When was it you first saw the water before the slide?

A. When I came back from the baker-shop, that is the first time I saw it.

Q. What time would that be?

A. It must have been a quarter-past ten.

Q. At that time you looked up the hill and you saw a stream of water coming down off the flume, I believe you said? A. Yes.

Q. How wide was that stream?

A. Just about the same.

Q. About 3 feet wide? A. Yes sir.

Q. It was coming right off the flume and running down towards the channel?

A. No, it wasn't even facing the channel—that water wasn't facing the channel—that water had a sort of an angle.

(Testimony of Robert Kirk.)

Q. In what direction?     A. This direction.

Q. Could you tell how thick the stream was?

A. No, you couldn't tell that.

Q. You couldn't tell that?

A. No, I couldn't tell how thick the stream was.

Q. It was facing down along the course of the hill? [241]

A. It was facing more this way, like,—coming this way, towards my cabin.

Q. And it was about 3 feet wide?

A. Yes, just about that.

Q. Was it any wider than that?

A. I don't know—it may have been—I never measured it.

Q. You couldn't see how thick it was?

A. No, I couldn't.

Q. And you wouldn't be able to tell how much water there was in that stream?

A. No, I wouldn't have any idea how much water was in it.

Q. Wasn't that just before the slide that you saw that?

A. Yes, I saw that amount of water before the slide.

Q. It was just about five minutes before the buildings came down that you saw that up there, wasn't it?

A. No, I didn't see that five minutes before the buildings come down—I told you I saw that much about a quarter-past ten. I went down to the baker-shop and it was a quarter-past ten when I

(Testimony of Robert Kirk.)

came back there and I saw that water then. I went in my cabin and came out again, and I was shoveling some stuff in front of my cabin door down the hill there.

Q. How far did that water drop before it hit the ground?

A. I don't know—I couldn't tell—I never measured it—I couldn't tell how far it would be.

Q. You heard the testimony of a witness who testified here a little while ago that it went about 50 or 60 feet—would that be about right?

A. I couldn't tell whether it was 50 or 60 feet—maybe that big back to where it was—I couldn't tell.

Q. I mean how far did it drop from where it left the flume until it hit the ground?

A. I don't think it would—I don't think it would drop anything like that—maybe 20 feet, maybe 25 feet.

Q. How many streams did you see up there—more than one? [242]      A. I only saw one.

Q. That is all the water that was running?

A. Yes.

Q. Just one stream?      A. Yes.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

### **Testimony of Emil Thompson, for Plaintiff.**

EMIL THOMPSON, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:



(Testimony of Emil Thompson.)

Direct Examination.

(By Mr. RODEN.)

Q. What is your full name, Mr. Thompson?

A. Emil Thompson.

Q. Where do you live?      A. On 10th Street.

Q. In the town of Juneau?      A. Yes.

Q. How long have you lived in Juneau?

A. About 25 years.

Q. What is your business?

A. Fishing and prospecting and mining.

Q. Were you in the town of Juneau on the day of the slide?      A. Yes.

Q. What were you doing in the morning of that day?

A. I come from the City wharf, was going up to Charley Goldstein's.

Q. What had you been doing at the City wharf?

A. I laid there with a boat.

Q. About what time was it you left the City wharf?      A. About nine, I guess, I left.

Q. And which way did you come up town? [243]

A. I went up town on the street there.

Q. You came up what we call Front Street?

A. Yes.

Q. At that time did you have occasion to look up on the sidehill?      A. Yes, sir.

Q. In the direction of the Alaska Juneau flume and penstock?      A. Yes, sir.

Q. What did you see, if anything?

A. I saw a stream of water coming out of there.

(Testimony of Emil Thompson.)

Q. Where was the stream of water coming from?

A. I never been up there, so I don't know—out of a flume of some kind.

Q. Where was this stream of water going to?

A. It went down the hill, down towards Izzy Goldstein's.

Q. How much water was there, about, Mr. Thompson?

A. It was a long distance—I guess about 3 foot, 3 foot and a half, or something.

Q. That was wide? A. Yes.

Q. You couldn't see how thick the water was?

A. No, sir.

Q. When you saw that water what did you do afterwards? A. I went right along.

Q. Where did you go to?

A. Charley Goldstein's.

Q. You went to the store of Charley Goldstein?

A. No, sir, I didn't quite get there yet—I met a couple of men there later on and I told them fellows, "If they don't get that off they will have a big slide over there."

Mr. HELLENTHAL.—Don't tell any conversation.

Q. You went into Charley Goldstein's store?

A. Yes, sir.

Q. That store is located on what street—Second and Seward Streets, is it? A. Yes. [244]

Q. I don't want to get the two locations mixed up, that is why I am asking you. A. Yes.

Q. Did you go back to the city float again?

(Testimony of Emil Thompson.)

A. Went back there, yes.

Q. Where were you at the time the slide occurred?

A. A little past Marshall and Newman's.

Q. Where is Marshall and Newman's with reference to Izzy Goldstein's place?

A. Just a little way from there—about a block and a half, I guess, or a block.

Q. It is on the opposite side of the street, is it?

A. Yes, sir.

Q. What happened then when you got down there?

A. I looked in a window there at some spark coils, and two or three, they were hollering around back of Izzy Goldstein's, and I looked back and the houses were coming there.

Q. Did you see the houses come down?

A. Yes.

Q. What else did you see up there?

A. I see houses come over—I couldn't walk very far, I hurt myself in the back some time ago.

Q. Did you see any water up there then?

A. Yes, there was water coming over.

Q. Where did you see the water coming from?

A. There was water, sand, mud and everything.

Q. Where was that water coming from?

A. Coming from that flume.

Q. Which flume?

A. The flume back of Izzy Goldstein's.

Q. Up on the hillside? A. Yes.

Q. Where was this water running at the time that

(Testimony of Emil Thompson.)

the slide happened with reference to the place that you saw it before you came up town? [245]

A. The water was running the same way.

Q. How long did you stay down there after the slide?

A. Well, I stayed there about an hour or so, I guess.

Q. Did the water continue to run all that time?

A. The water was running about half an hour.

Q. And then it quit? A. Yes.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Thompson, how long before the slide was it that you saw the water on the hillside?

A. I left there about half-past nine.

Q. Now, you saw a stream of water about 3 feet or more wide?

A. About 3 feet—something like that.

Q. It was coming right towards you, where you were, when you saw it down there on Front Street?

A. I was on Front Street, yes.

Q. Where on Front Street?

A. Well, I saw it at different places among the houses.

Q. Were you in front of the soda works—along there?

A. When I went up to Charley Goldstein's I saw it in different places, and when I come back I saw it.

Q. When you first saw it where were you?

(Testimony of Emil Thompson.)

A. I was on this side of Forrest's, some place.

Q. Up there by the Forrest building on Front Street?     A. Yes.

Q. That is a little the other side of Izzy Goldstein's store?     A. Yes.

Q. That is where you first saw the water coming from the flume?     A. That is the first.

Q. And the stream then was about 3 feet wide, you think?

A. I didn't pay much attention to it then, before I come on [246] this side of Izzy Goldstein's—a little this side.

Q. When you saw it there in front of Forrest's place you could see how thick it was, could you?

A. No.

Q. You couldn't see how thick it was because it was running right towards you?     A. Yes.

Q. You could only tell how wide it was?

A. I couldn't tell that either at that distance.

Q. The distance was too great to tell just how wide it was?     A. Yes.

Q. But you could see the width of it, anyway?

A. I couldn't tell that either because I judge it was 3 foot or 3 foot and a half or so.

Q. You couldn't tell as to the thickness—I don't mean that—because you were right abreast of it?

A. Yes, just about abreast of it.

Q. The stream was coming right towards you so you could see the face of it—that is what I mean?

A. I don't remember the face of it—the face facing to me, I don't remember that either—I don't

(Testimony of Emil Thompson.)

remember whether it was facing to me or sideways, or face to me—I don't know—I won't say.

Q. How far was it dropping from the flume down to the ground?

A. I don't know—I never been up there.

Q. From what you could see how far did it look?

A. I couldn't tell you anything about that—I seen it.

Q. You saw a stream there and that is about all you know, isn't it, Mr. Thompson?

A. Yes, about all I know about that.

Q. You don't know how far it dropped before it hit the ground, or where it went? A. No.

Q. You don't know where that water went after it hit the ground? [247]

A. Yes, I saw it come downhill.

Q. Where did you see it?

A. I saw it after the slide happened.

Q. But I mean at the time you first saw it—you couldn't see where it went after it hit the ground?

A. I saw the stream, yes.

Q. After the slide happened you saw the water on Front Street? A. Yes.

Q. That is what you mean? A. Yes.

Q. But before the slide happened you saw it on top? A. I saw it on top, yes.

Q. But you couldn't see then where it ran to?

A. Not that time.

Q. No, not that time? A. No.

Q. How many streams did you see there—one or more streams? A. Only one stream.



(Testimony of Emil Thompson.)

Q. And that stream, where was that with reference to the mouth of the tunnel,—you know where the mouth of the tunnel is there, don't you?

A. No, I don't—I never been up there.

Q. It was right there where that shed is, wasn't it?

A. Yes.

Q. There is a shed there—quite a wide shed?

A. Yes.

Q. The shed is about the width of this room—maybe a little wider—50 or 60 feet, right where the water was?

A. Alongside that shed, yes, the water come over.

Q. The water came over alongside of that shed, and that shed is about 40 feet wide, isn't it?

A. I don't know—I never have been up there.

Q. I don't mean that you could say exactly how wide, but near that?

A. I couldn't say. [248]

Q. You would say something like that, wouldn't you?

A. I put up one shed like that myself and I made it 20 feet square.

Q. You don't know what the length of it is, but it is at least 20 feet?

A. Yes.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. RODEN.)

Q. Do you know what that shed was being used for, Mr. Thompson—do you know what was in that shed?

A. Penstock, I believe.

Q. You know what a penstock is, do you?

A. Yes, I have constructed some.

(Testimony of Emil Thompson.)

Q. You have constructed some penstocks, have you? A. Yes.

Q. And this water came out of the penstock?

A. Yes.

Mr. RODEN.—That is all.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. Who told you that was a penstock up there?

A. It must be because I make some myself.

Q. When was the first time you heard there was a penstock up there?

A. I come to that myself because the pipe is running down the hill from the penstock; there has got to be a penstock there.

Q. Did you see the pipe running down the hill?

A. I did.

Q. Where? The pipe is covered under the ground, isn't it?

A. It wasn't years ago—it wasn't covered.

Q. There was a time you say that pipe wasn't covered? A. I see some part of it. [249]

Q. You saw some part of it—there was a time when a part of that pipe wasn't covered?

A. Some time.

Q. And now you know where that pipe laid. How many years ago was that pipe laid?

A. I wasn't there when they laid it.

Q. Was it at the time they laid it that you saw that pipe? A. I don't remember that.

Q. When did you see it?

(Testimony of Emil Thompson.)

A. I saw it some time—I passed by up and down.

Q. And you don't know when?     A. No.

Q. And that is how you judge that that place is where the penstock must have been?     A. Yes.

Q. Because you saw a pipe some time, you don't know when?     A. Yes.

Q. What else have they besides the penstock?

A. They must have a flume.

Q. Did you see the flume?     A. No.

Q. You don't know anything about that pipe you saw?     A. No.

Q. You never saw the flume or penstock, but you know they must have a flume and penstock?

A. I have never been up there.

Q. You never looked at the flume or penstock?

A. I looked at the flume, and I looked at the penstock—I looked at the house.

Q. How was that penstock built?

A. Well there is one way to build them—I built two of them—I built them 20 feet square and 12 feet high.

Q. How was this one built up here? I am not talking about the one you built. [250]

A. I don't know which way you built it.

Q. You don't know anything about this one?

A. No.

Q. You don't know anything about it?     A. No.

Q. You never saw this penstock up here?

A. No.

Q. You never saw the flume?

A. Except at a distance.

(Testimony of Emil Thompson.)

Q. You know there was a flume and penstock up there by what people have told you?

A. No, I saw it with my own eye from the distance—I can see from the street.

Q. Did you from the street see the flume and the penstock?

A. Yes, I could see the house there.

Q. You could see the house there, but did you see the flume and the penstock?

A. I saw it from the street, yes.

Q. Did you see the flume from the street?

A. Yes.

Q. Did you see the penstock from the street?

A. I can see that little house there.

Q. Can you see it now?     A. I never looked.

Q. Look out and see.

A. No, I cannot see so far now.

Q. Did you see any other houses up there at that time except the penstock?

A. I don't remember.

Q. Did you see any other houses up there at that time except the penstock when you saw the water running?

A. I don't remember whether there was other houses there or not.

Q. You don't know?     A. No.

Q. You didn't see any? [251]     A. No.

Q. You only saw that one building, maybe 20 or 30 or 40 feet long?     A. What?

Q. You only saw one building up there?

(Testimony of Emil Thompson.)

A. I saw one building—I saw that building that is said to be the penstock.

Q. And that house that you talked about, did it have a roof over it?

A. I wouldn't say from a look at it.

Q. You don't know?      A. No.

Q. You don't know how it looked, then?

A. No.

Q. Do you know where the tunnel came out?

A. The tunnel came out right close to where the house is.

Q. Did the tunnel come out at the same place that you saw the stream of water?

A. The water came out right at that little house.

Q. Who told you to say that the water came out of that little house?

A. Nobody—I told you because I seen it.

Q. Every question I ask you, you make that same answer, don't you, the water came out of that little house?

A. Alongside of the house—the little house.

Q. Where was that little house with reference to the portal of the tunnel—was it near the tunnel or a long ways from it?

A. I never was up there—I never saw it.

Q. You could see the tunnel, couldn't you?

A. I never watched it.

Q. You have been on Front Street a good many times and looked up that hill, haven't you?

A. Yes.

Q. Could you see the mouth of that tunnel?

(Testimony of Emil Thompson.)

A. I never watched it—I never looked up.

Q. The only time you ever looked up there was the time you saw [252] this water?

A. Yes, I saw the water—I couldn't help that.

Q. That was the only time you ever looked up there?

A. Oh, I looked up there lots of times.

Q. Did you ever see the mouth of the tunnel going into the mountain there?

A. I ain't in Juneau all the time—I might have seen it, but I ain't in Juneau all the time—I am out lots of times.

Q. Was that little house right at the portal of the tunnel or a long ways away from it? Do you know, or don't you know?

A. I don't know anything about what is right there.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. RODEN.)

Q. Show us on this picture here where this little house is located that you are talking about.

A. I cannot see it with these glasses—not very good.

Q. Well, if you cannot see it say so?

A. No, I cannot see it.

Q. Have you had much experience around penstocks, Mr. Thompson?

A. Yes, I have made them.

Q. Where?

A. The last one I made was down to Snettisham.



(Testimony of Emil Thompson.)

Q. Where did you make the other one?

A. I made that over in the old country.

Mr. RODEN.—That is all.

Q. (By Mr. HELLENTHAL.) Did you see water coming out of them in the old country, too?

A. No, I did not.

Mr. HELLENTHAL.—All right; that is all.

(Witness excused.) [253]

**Testimony of Charles Helsing, for Plaintiff.**

CHARLES HELSING, called as witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. What is your name? A. Charles Helsing.

Q. What is your business, Mr. Helsing?

A. Fisherman at the present time.

Q. How long have you been engaged in the fishing business? A. About 4 years.

Q. And during that time you have made Juneau your headquarters, I suppose? A. Yes, sir.

Q. Were you in Juneau the day of the slide?

A. Yes, sir.

Q. On the 2d day of January, 1920?

A. Yes, sir.

Q. What were you doing that day?

A. I came walking up the street.

Q. Where were you coming from?

A. From the City Float.

(Testimony of Charles Helsing.)

Q. When you were coming up the street did you have occasion to look up on the hillside in the direction—

A. Well, it would draw any one's attention to the hillside that morning.

Q. What called your attention to it, or drew your attention to it?

A. An excessive flow of water.

Q. Where did you see any water flowing that morning?

A. It came from a flume or wooden box up on the hillside.

Q. Where did you see the water?

A. It came from a wooden box,—a kind of a flume, I guess. [254]

Q. Where was that wooden box located, or flume?

A. It was somewheres abreast of Forrest's building—somewhere around there, I should judge, upon the hillside.

Q. Abreast of the Forrest building?

A. Somewheres around there.

Q. What time did you see any water coming over that?

A. About half-past ten, just about.

Q. Where did you go to then?

A. I was on the road up to the Customs-house.

Q. Did you go to the Customs-house?

A. Yes, sir.

Q. Did you return again?      A. Yes, sir.

Q. Where were you at the time the slide happened?

(Testimony of Charles Helsing.)

A. I was down the street—I didn't see the slide.

Q. Whereabouts were you?

A. I must have been down close to the sawmill, I think.

Q. Did you turn back then and go to the slide?

A. Of course—we all heard the rumble, the noise.

Q. Did you turn back and go to the place where it happened?     A. Yes, sir.

Q. What did you see then?

A. It was all down the hillside—most of it, I expect—and of course water running.

Q. You saw water running?     A. Yes, sir.

Q. Where did you see water running?

A. Right over the ground that slid down.

Q. The water which you had seen about an hour or so before the slide, where was that running with reference to the place where the dirt had moved away?     A. Why, over the same place.

Mr. RODEN.—You may cross-examine. [255]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. What time in the morning did you see the water?     A. About half-past ten.

Q. You were in front of the Forrest building on Front Street?

A. I come walking up—I could see it right from the city dock coming up this way all the time.

Q. From the city dock coming towards town?

A. Uptown; yes.

Q. You could see it on Front Street?     A. Yes.

(Testimony of Charles Helsing.)

Q. How wide was that stream that you saw coming down?

A. I couldn't judge exactly how wide because distance makes a big difference in knowing those things, but it must have been 4 or 5 feet wide over the hillside.

Q. That was about half-past ten in the morning?

A. Yes, sir.

Q. And that stream at that time that you saw was 4 or 5 feet wide coming from the flume?

A. I should judge it was.

Q. How far did it fall before it hit the ground?

A. At what place?

Q. How far down did it fall before it hit the ground—it came down like a waterfall, didn't it?

A. Whereabouts do you mean, Mr. Hellenthal—at the flume?

Q. Yes, at the flume.

A. It must have been 10 or 15 feet, I guess—it couldn't have been much farther—the flume is built on the ground.

Q. Did you notice at that time how far it dropped?

A. All I could see, it came right from the flume and hit the ground.

Q. Did you notice how far it had to fall before it hit the ground?

A. No, sir, I couldn't tell—I should judge around 10 or 15 feet.

Q. The stream was 4 or 5 feet wide, you say?

(Testimony of Charles Helsing.)

A. Not at the flume—it was farther down—it would spread out.

Q. How wide was it at the flume?

A. I couldn't know that much of a distance there but it must have been two or three feet.

Q. It was a white stream?      A. Yes, sir.

Q. You couldn't tell how thick it was, could you?

A. No, sir, not from the street I couldn't say that.

A. The stream was coming right towards you?

A. No; on the street the water shot off on an angle from where I was.

Q. You couldn't see the thickness, you say?

A. No, I couldn't see that.

Q. You could only see the width of it from where you were on Front Street?

A. Judging about the width—I couldn't say exactly how wide it was.

Q. No, I don't mean exactly, but you could see only the wide side of the stream when you were on Front Street?      A. Yes, sir.

Q. You don't know how wide it was?

A. No, sir.

Q. But you think it was 3 feet, anyway?

A. Yes, sir.

Q. And widened out a little as it hit the ground?

A. It had to do that of course.

Q. You couldn't say now how far it had to drop to get down?      A. No, sir.

Q. You know where the tunnel is up there, don't you?

(Testimony of Charles Helsing.)

A. Just about where it is—it can be seen, I guess.

Q. The stream was just about where the tunnel is?

A. No, it wasn't—the place where the water came out must have been north of the tunnel a little but how much I couldn't say because you couldn't see the tunnel exactly. [257]

Q. It would be about how many feet north of the tunnel where the stream was?

A. I couldn't say exactly.

Q. 10 or 15?

A. No, it must have been more than that—it must have been something like 20 or 25 feet—somewhere along there—I don't know because I couldn't see the tunnel exactly.

Q. Would you say between 25 and 30 feet?

A. Something like that.

Q. How many streams did you see—one stream or more streams?

A. I saw only one big stream. Of course there are a couple of gulches that are always running when it is raining.

Q. There was only one big stream coming from the flume?

A. Yes, sir; that is all I could see—I didn't see any more.

Q. Were there any little streams coming from the flume?

A. I didn't see any little streams, no, sir.

Q. You only saw one stream? A. Yes, sir.

Q. That was a big stream? Yes, sir.



(Testimony of Charles Helsing.)

Q. And that was the only stream you saw?

A. Yes, sir.

Q. How long after the slide was it when you got to the slide?

A. It must have been 5 minutes, I guess—I don't think it could have been more.

Q. Where were you when the slide happened?

A. I was down towards the sawmill, where I live.

Q. And you don't know how long it was before you got to the slide?

A. No; it would take me about 5 minutes to come up there.

Q. Did you hear the slide?

A. Yes, the rumble of it, yes.

Q. And then you turned back?      A. Yes, sir.  
[258]

Q. You were at the sawmill you say when you heard the rumble of it?

A. Somewhere around there.

Q. And you went back to where the slide was?

A. Yes, sir.

Q. And when you got there that time that is when you saw the water coming over the top?

A. I saw water before that slide.

Q. I know you did before, but I mean after the slide—after you got back to the slide, did you see any water then?      A. I did, too, yes.

Q. At the same place?      A. At the same place.

Q. There was water still running there?

A. Yes, sir.

(Testimony of Charles Helsing.)

Q. When you got to the place where the slide happened did you see water running over the street there? A. Why, it was down.

Q. How is that?

A. The upper street was down.

Q. I am talking about Front Street where Goldstein's store was—was there any water on that street? A. Surely.

Q. There was quite a lot of water running down there when you got there, wasn't there?

A. Yes.

Q. And there was water coming between the buildings there?

A. Yes, between the buildings.

Q. At that time was there any water coming over the top of the slide where the slide broke loose? A. There was, yes.

Q. How much?

A. The same as before—about the same.

Q. You are talking about this flume?

A. Yes. [259]

Q. I am talking about where the slide broke loose. When you first got there was there any water coming over that? A. The same place, yes.

Q. You had never seen water coming over that place before, had you?

A. No, but the same amount of water was coming as was before.

Q. Before the slide you didn't see any water where the slide broke loose, did you?

A. It came right over from where the slide broke

(Testimony of Charles Helsing.)

loose—it came from the flume.

Q. You couldn't see where that water went to, could you?

A. It went into a small grove of trees—those trees came out in a lot of brush.

Q. It ran into the brush?

A. I didn't say brush—I said trees.

Q. You couldn't see where it went to after that?

A. Yes, I could—it came out of these trees in the brush.

Q. You couldn't see where it went after it got through the brush?

A. Yes, you could see where the water went to.

Q. Where did that water go to?

A. It went over this ridge that they call a hog-back.

Q. And you saw that?      A. Yes, I did.

Q. What is a hog-back?

A. It is a ridge between two gulches, as a rule.

Q. What hog-back did you see the water coming over?

A. I call it a ridge—I said some people call it a hog-back.

Q. That was after the slide you saw that?

A. Yes, sir—before the slide too.

Q. Before the slide you saw that water coming from the flume?      A. Yes.

Q. And you knew just where it went to?

A. It was a big volume of water—that is the only place you could get a big volume of water was from the flume.

(Testimony of Charles Helsing.)

Q. Did you trace that water down the hill, just where it went to, [260] before the slide?

A. I certainly did not.

Q. It was after the slide that you saw the water down below?

A. I saw water coming down all the time.

Q. You saw the water coming down where it came from the flume just before the slide, didn't you?

A. Surely.

Q. You didn't see it before the slide down at Goldstein's store, did you?

A. No, I don't think so, no.

Q. You didn't see any water before the slide except on the top, where it came from the flume—isn't that right?

A. It came down—it took it some time to flow through that loose gravel and dirt up there.

Q. Wasn't there a dump up there?

A. No dump, no.

Q. There was a lot of kind of loose gravel up there—a dump?

A. No, it was no dump—it was a ridge between two small gulches—couldn't be no dump from the hillside above.

Q. It came through small gulches, you say?

A. No, I didn't—I say there was a ridge with two small gulches on each side of it, and it carried the dirt down.

Q. It went between those two gulches?

A. No, it didn't—it went on the ridge.

Q. That is where you saw it after the slide?

(Testimony of Charles Helsing.)

A. And before the slide, too.

Q. And you are sure of that?     A. Yes, sir.

Q. And you are sure of everything except how far that water had to drop to the ground, aren't you?

A. I told you I couldn't judge that from the distance.

Q. How big a stream did you see going down over the hill—over the hog-back? [261]

A. It is pretty flat down there—the ridge is fully covered with brushes and grass and of course it spread out down there.

Q. How wide was it?

A. I couldn't say—probably 7 or 8 feet—something like that, in that flat part.

Q. A big stream 7 or 8 feet wide was coming over the hog-back—that is right, is it?

A. It wasn't exactly one solid stream up on the hog-back, because it was covered with brushes, etc.—it ran in between.

Q. It was 7 or 8 feet wide when you saw it up on the hog-back?

A. Just about—I would say—the whole thing together.

Q. Yes, that was the width of the stream—the whole stream together?     A. Yes.

Q. And that is the same stream that you saw, after the slide happened, coming over the top of the slide, when you came back there?     A. Yes, sir.

Q. How wide was it at that time?

(Testimony of Charles Helsing.)

A. About the same thing—the same stream of water, I should judge.

Q. About 7 or 8 feet wide?

A. Yes, sir, I guess so—about.

Q. That was about the width—do you see the top of the slide there? A. Yes.

Q. When that picture was taken that stream wasn't there, was it?

A. It don't look like it.

Q. And you were there about five minutes after the slide?

A. It doesn't show any water in that picture at all.

Mr. HELLENTHAL.—That will be all from you.  
(Witness excused.)

(Whereupon court adjourned until 10 o'clock to-morrow morning.) [262]

# MORNING SESSION.

March 25, 1921, 10 A. M.

## Testimony of Mrs. N. G. Nelson, for Plaintiff.

MRS. N. G. NELSON, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

### Direct Examination.

(By Mr. RODEN.)

Q. You may state your name, please.

A. Mrs. N. G. Nelson.

Q. Where do you live, Mrs. Nelson?



(Testimony of Mrs. N. G. Nelson.)

A. Down on Front Street.

Q. In the town of Juneau? A. Yes.

Q. How long have you lived down there on Front Street? A. Two years.

Q. About where is your place on Front Street located with reference to Mr. Goldstein's store?

A. It was up above it, on the opposite side of the street from Goldstein's.

Q. You have lived there for how many years, did you say? A. Two years.

Q. Where do you live, downstairs or upstairs?

A. Upstairs, up above the store.

Q. From your rooms upstairs have you a free and unobstructed view of Mount Roberts and that portion of the sidehill upon which is located the flume of the Alaska Juneau Gold Mining Company?

A. Yes.

Q. And you have had that view there for about two years? A. Yes.

Q. Do you remember the day of the slide, Mrs. Nelson—that was the 2d day of January, 1920?

A. Yes.

Q. Were you here then? A. Yes, I was here.

Q. On that day did you observe any water on that sidehill in the neighborhood of this flume? [263]

A. Yes, I did; and I saw it at least two days ahead of the flood, too.

Q. Where was this water coming from, Mrs. Nelson?

A. Well, I didn't know in the morning where it come from, and I asked Mr. Nelson, my husband,

(Testimony of Mrs. N. G. Nelson.)

and he said it was from the Alaska Juneau flume that was up there.

Q. Take a look at this picture, Mrs. Nelson, and see if you can tell us where this water was coming from.

A. It is right under this side here—right here.

Q. That is where that little house is located?

A. Yes, a little house there, yes, and it was just coming down like a fall.

Q. Is this the place where you are pointing?

A. Yes.

Q. Now, you saw this water on the day of the slide, you say? A. Yes, I did.

Q. Did you see it before or after the slide?

A. I saw it before the slide, and I saw it right after the slide, a little while; then it was shut off—it stopped.

Q. About how long before the slide did you see it on that day?

A. On the day of the slide?

A. Yes, on the day of the slide—about how long before, as near as you can recollect?

A. I saw it when I got up in the morning—I watched that place there because ever since I knew it was from the flume I was always worried about it and I always watched it.

Q. Where were you at the time of the slide?

A. At the time of the slide I just went down to the store—I just took my baby in the room and I went down to the store, and I was right in the middle of the store when I heard a noise.

(Testimony of Mrs. N. G. Nelson.)

Q. What did you do then?

A. I went upstairs and grabbed the baby—I went upstairs and Mr. Nelson went out on the street.

Q. Did you look out of your window again then?  
[264]

A. Yes, I looked from the roof—I had a good view from there, too.

Q. Did you then see any water coming down the hill?

A. Right then I did, yes—right immediately after.

Q. From your place did you see where the ground had broken loose?     A. Yes.

Q. Did you see any water around there, Mrs. Nelson?

A. No, not around where the slide was, but I saw it up above, from where the flume was.

Q. And did this water run in the direction of the slide?

A. Yes, right down in that direction.

Q. Now, had you ever seen this water running out of this particular place, Mrs. Nelson, at any time before the slide?

A. Well, I saw it about two days before the slide—it started little and then grew bigger.

Q. You saw that water running there two days before the slide, you say?     A. Yes.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. When you saw it two days before the slide,

(Testimony of Mrs. N. G. Nelson.)

Mrs. Nelson, there wasn't quite so much water, was there?

A. It wasn't quite so big, no, as towards the last.

Q. The water was running right down the hill towards Front Street—spouting out towards Front Street? A. Yes.

Q. And it was quite a wide stream?

A. Well, I wouldn't say exactly it was a wide stream, but it was big enough to notice, and of course as the days went by it grew bigger and bigger all the time.

Q. And you saw it several times during the day?

A. Yes, I did.

Q. As it rained more the stream got bigger?

A. What? [265]

Q. As it rained more the stream got bigger?

A. Yes, that is what it looked like.

Q. You say you saw it the first time two days before the slide? A. Yes.

Q. Did you see it several times that day?

A. What day?

Q. Two days before the slide?

A. Well, that was the day I noticed it, two days before the slide.

Q. That is when you first noticed it?

A. First noticed it.

Q. And you saw it several times that day, you say?

A. I don't know exactly if I looked out—how many times I noticed it—I wouldn't say, no, that was the first day.

(Testimony of Mrs. N. G. Nelson.)

Q. But you saw it several times as you looked out of the window?     A. Yes.

Q. And it was running there when you looked out?     A. Yes.

Q. And that was true on the first of January, the day before the slide, also, wasn't it?

A. Yes, indeed.

Q. Then it was raining, wasn't it?

A. Yes, sir.

Q. And it was a little larger than it was the day before?

A. Yes, sir; the first of January it was larger than it was the day before.

Q. Than it was on the last day of December?

A. Yes.

Q. And the 2d of January, that is the day that the slide happened, it was larger still?

A. It looked about the same to me on the first as the second.

Q. It was running at the same place?     A. Yes.

Q. And you saw only one stream, Mrs. Nelson, didn't you?     A. Just one stream. [266]

Q. You never saw more than one stream?

A. No, not at that place?

Q. That stream, you noticed where it hit the ground as it came down, didn't you?     A. Yes.

Q. It would hit the ground 35 or 40 feet from where it came from the flume?     A. Yes.

Q. Quite a ways down it struck the ground?

A. Yes.

Q. That is right, isn't it?     A. Yes.

(Testimony of Mrs. N. G. Nelson.)

Q. You don't know how many feet, but quite a long ways—maybe from 35 to 40 feet?

A. It looked like a fall coming down.

Q. It looked like water falls coming down, didn't it? A. Yes.

Q. That is what it looked like? A. Yes.

Q. Did you ever see it before the 2d of January, or did you ever notice that stream there before?

A. Before the 2d of January?

Q. I mean did you ever notice it there before you noticed it two days before the slide?

A. No, I don't remember ever seeing it.

Q. But you saw it on those three days?

A. Yes.

Q. And you saw it several times during the days?

A. Yes, the last day before the first of January, I saw it several times then.

Q. The first time you saw it was early in the morning? A. Yes.

Q. And then at different times during the day?

A. Yes.

Q. And that was true on the 2d day of January—you saw it about [267] 7 o'clock in the morning the first time?

A. Yes, when I got up, just about.

Q. That would be about that time? A. Yes.

Q. And you saw it then several other times during the day?

A. Not the second during the day because it happened pretty early in the morning.

Q. But during the forenoon, I mean? A. Yes.



(Testimony of Mrs. N. G. Nelson.)

Q. So you know it ran all forenoon—that is, it seemed as if it ran all forenoon to you?

A. Not on the 2d it didn't run all forenoon because it was shut off right after.

Q. I mean up to the time of the slide?     A. Yes.

Q. And the first of January it ran all day, as near as you can tell now?     A. Yes.

Q. And you saw it at different times during the day so it looked to you as if it ran all day?

A. Yes.

Q. From 7 o'clock in the morning until evening?

A. Yes.

Q. And the spout ran from the flume right down the hill towards Front Street?     A. Yes.

Q. Spouted towards Front Street?     A. Yes.

Q. And it was a stream from 3 to 4 feet wide, would you say?     A. Maybe about that.

Q. You couldn't tell how thick it was, I suppose?

A. No—it was pretty big.

Q. It was pretty big, but you couldn't tell from where you stood just how thick it was?

A. No. [268]

Q. It looked like a waterfall?     A. Yes.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. RODEN.)

Q. How long after the slide did the water keep on running, Mrs. Nelson, as near as you can tell?

A. I would say around 15 minutes after.

Q. Then it quit?     A. Then it was shut off.

(Testimony of Mrs. N. G. Nelson.)

Mr. RODEN.—That is all.

Q. (By Mr. HELLENTHAL.) You don't know anything about the water being shut off, do you, Mrs. Nelson, that is just what you have been told?

A. No, but it was stopped—something must have stopped it.

Q. (By Mr. HELLENTHAL.) You don't know anything about anybody shutting the water off—you were not up there.

A. No.

Q. (By Mr. HELLENTHAL.) You were just in your house?

A. Yes, but I saw the water stop running.

Q. (By Mr. RODEN.) Have you ever seen it running out of that same place since?

A. No, never.

Q. (By Mr. HELLENTHAL.) You have never looked up there, Mrs. Nelson, since that you know of? A. Yes, many times.

Q. (By Mr. HELLENTHAL.) Couldn't it run there without your seeing it?

A. After the slide, you mean?

Q. (By Mr. HELLENTHAL.) Yes, there might be water running without your seeing it—you are not looking up there all the time?

A. Not out of the flume. [269]

Q. (By Mr. HELLENTHAL.) It might run without your seeing it? A. I have a good view.

Q. (By Mr. HELLENTHAL.) But I mean it might run without your seeing it?

(Testimony of Mrs. N. G. Nelson.)

A. No; whenever I looked up I never saw any water since the flood.

Q. (By Mr. HELLENTHAL.) You only saw one stream? A. Yes.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [270]

**Testimony of W. J. Benson, for Plaintiff.**

W. J. BENSON, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. Mr. Benson, state your full name, please.

A. W. J. Benson?

Q. Where do you live, Mr. Benson?

A. Juneau.

Q. How long have you lived in the town of Juneau?

A. I lived in Juneau somewheres between four and five years.

Q. Were you in the town of Juneau on the 2d day of January, 1920? A. Yes, sir.

Q. That is the day of the slide? A. Yes, sir.

Q. You know where is located on the sidehill back of the town of Juneau, the flume and penstock of the Alaska Juneau Gold Mining Company?

A. Yes, sir.

Q. What did you do in the morning of the 2d of January, 1920, Mr. Benson?

(Testimony of W. J. Benson.)

A. I went from my house to the cold storage.

Q. I wish you would state to the Court and jury where your house is located.

A. My house is located on 5th and E Street, below the Catholic school.

Q. Where is the cold storage located?

A. The cold storage is down by the city wharf.

Q. How did you go down?

A. I walked down the street—down Gastineau Street, and I turned down by the Elks Club, and went on down the waterfront.

Q. At that time did you have any occasion to look up on the sidehill?

A. Walking along I glanced up, like I did at any time. [271]

Q. Did you see any water on the sidehill at that time?

A. I didn't see any water on the sidehill—I seen water coming out of the flume—the end of the flume.

Q. Whereabouts was this flume located?

A. At the further end, up where the little house is.

Q. How much water, about, did you see coming out of there, Mr. Benson?

A. I couldn't give any definite amount of water or anything like that, from the distance from the street to there, but there was a waterfall running.

Q. When you saw this you were on what we call Front Street?

A. Right beside the soda-water works on Front Street.

(Testimony of W. J. Benson.)

Q. How is the soda works located with reference to the Goldstein store?

A. It is kind of cater-cornered like—it is just up above and on the opposite side of the street—on the right-hand side of the street going down to the cold storage.

Q. Goldstein's store is on the left-hand side going to the cold storage?      A. Yes.

Q. Do you know how long that water continued to run before the slide happened?

A. I couldn't tell you.

Q. Where were you at the time of the slide?

A. I was at home when the slide occurred.

Q. You heard the slide at home, did you?

A. I heard the fire-alarm.

Q. Can you give us any idea as to how long it was from the time you had seen that water coming out of this particular place until you heard the fire-alarm?

A. To the best of my knowledge it would be probably about an hour, because it was ten o'clock when I left my house to go to the cold storage.

Q. Where was this water running to that you saw coming out of this— [272]

A. Just shooting out over the flume and shooting down just like a waterfall—it was shooting over a level place, like, and shooting out and dropping down.

Mr. RODEN.—You may cross-examine.

(Testimony of W. J. Benson.)

Cross-examination.

(By Mr. HELLENTHAL.)

Q. That was maybe about a quarter after ten in the morning, you think, Mr. Benson?

A. When I went down to the cold storage, yes, sir.

Q. When you were there? A. Yes, sir.

Q. How wide was the stream, Mr. Benson?

A. I couldn't tell you that.

Q. I mean approximately.

A. I couldn't give you any idea.

Q. Three or four feet wide, maybe?

A. I didn't take that much notice.

Q. You didn't specially notice it?

A. I noticed the water coming out of the flume.

Q. It was spouting out towards Front Street?

A. No, not spouting out towards Front Street at all—it was spouting out towards Gold Creek—shooting out of the end of the flume and falling down.

Q. When did you have a talk with Mr. Roden about this thing?

A. I didn't have any talk with Mr. Roden.

Q. Who did you talk to about this?

A. Nobody.

Q. Did you ever talk to anybody about it?

A. Only passing the remark about seeing this water, in my place of business.

Q. Didn't you ever say anything to the men on the other side about what you knew about this case?

A. No, sir. [273]

Q. Not at all?



(Testimony of W. J. Benson.)

A. No, sir; if I had I would have been called in the other case.

Q. You just by chance came up here to testify?

A. No; some one who heard me in the poolroom told them what I said.

Q. They put you on the witness-stand without talking to you?     A. Yes, sir.

Q. Do you mean to tell me that Henry Roden put you on the witness-stand without asking you what you knew about it?

A. He came to see me, of course.

Q. How thick was this stream?

A. I couldn't tell you, I told you.

Q. You didn't pay enough attention to it to tell?

A. No, sir.

Q. How wide this stream was?

A. It was quite a ways from the hillside to the street.

Q. You only saw it was like a waterfall falling and hitting the ground?     A. Yes, sir.

Q. How big would you estimate it was before it hit the ground?

A. I couldn't estimate you any distance.

Q. Would it be 45 feet, 60 feet, 75 feet or 100 feet?     A. It wouldn't be that high.

Q. About how high?

A. I couldn't give you any definite answer as to how high it would be, but making a rough estimate it would be 12 feet, maybe, or 14 feet.

Q. It came off like it was coming from a level place, shooting down?

(Testimony of W. J. Benson.)

A. It came out like it was coming from this chair here and dropped down.

Q. That is the way it looked to you? A. Yes.

Q. And you couldn't tell how wide it was or how thick it was? [274] A. No.

Q. You didn't pay enough attention to it?

A. No; I glanced up on the hillside walking past the same as I would to-day, if I was walking by, look up and just notice it—it was raining pretty hard that day and I looked up on the hillside and seen this water shooting out of the flume—that is all I know about it.

Q. Do you know where the portal of the tunnel is there? A. Yes, sir.

Q. Where was the water shooting out with reference to that portal? A. Below the portal.

Q. About how many feet?

A. I couldn't tell you that.

Q. Anywhere from 5 to 15 feet?

A. It is quite a while now since I was up on that sidehill.

Q. It would be 5, 10, 15 or 20 feet—something like that? A. A little farther than that.

Q. It would be in that neighborhood, anyhow.

A. It is somewheres around there—I couldn't give you the distance.

Mr. HELLENTHAL.—That is all.

Q. (By Mr. RODEN.) Now, about your being a witness here, Mr. Benson; I came down to your poolroom about three days ago, didn't I, and talked to you about this? A. Yes.

(Testimony of W. J. Benson.)

Mr. HELLENTHAL.—I object to that—if he wants to impeach his own witness—

The COURT.—It is not redirect examination.

Q. (By Mr. HELLENTHAL.) It is a fact that you talked to Henry Roden about this case?

A. He came to me himself—he came and asked me if I had seen it.

Q. (By Mr. HELLENTHAL.) And you talked to him about it? A. I told him what I had saw.

Q. (By Mr. HELLENTHAL.) It is really true that you talked to him [275] about it?

A. Yes.

Mr. HELLENTHAL.—All right; that is all.

(Witness excused.)

**Testimony of George P. Torkleson, for Plaintiff.**

GEORGE P. TORKLESON, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. What is your name?

A. George P. Torkleson.

Q. What is your business? A. Carpenter.

Q. How long have you lived in the town of Juneau, Mr. Torkleson?

A. Going on four years.

Q. Were you in the town of Juneau the day of the slide, January 2d, 1920? A. Yes, sir.

Q. Where did you live at that time?

(Testimony of George P. Torkleson.)

A. 515 Front Street, in Sorby's place.

Q. Did you leave the place there at any time the day of the slide?

A. I left it after the slide occurred.

Q. How long after the slide occurred?

A. Well, I don't know just exactly how long after the slide occurred because what attracted my attention to it, I happened to stand in front of the stove making some breakfast and I seen two fellows running to the fire-alarm box and turn in the alarm, so I questioned them and they told me it was a slide, and I went right out.

Q. Did you hear anything of the slide—did you hear the slide yourself?

A. I didn't hear it. [276]

Q. Did you hear the fire-alarm?

A. I heard the fire-alarm because I was on the street and the fire-alarm was right at my window, and I seen these fellows turn in the alarm.

Q. Were you at the slide before the fire department got there, or after?

A. I was at the slide before the fire department got there.

Q. When you got there did you see any water anywhere?

A. Well, I didn't stop to notice anything like that because I happened to look up the hill and I seen one lad trying to get himself out up there.

Q. You paid no attention to anything except the people that might be in the wreckage?

A. Yes, sir.

(Testimony of George P. Torkleson.)

Q. Are you acquainted with the flume and the penstock of the company?     A. Yes, sir.

Q. You have had plenty of opportunity to observe that?     A. Oh, yes.

Q. Do you know where the penstock is located up there?     A. Yes.

Q. Where is that located?

A. Right below the hill—I don't know just exactly from the tunnel down whereabouts it is.

Q. Do you know where the change house was up there—what they call the change house?

A. No, I haven't noticed it enough to know that.

Q. I show you this picture here, Exhibit "N," and ask you to show about where that penstock was located that you are speaking about.

A. Right in here some place.

Q. This has been identified here as the change house.

A. I don't know enough about mining to know it.  
[277]

Q. Have you ever seen any water coming out of this place that you indicated there?     A. Yes, sir.

Q. When did you see that?

A. Two days before the slide, when I first noticed it.

Q. How much water was coming out of there at that time?

A. I couldn't exactly tell because I wasn't paying any attention to that.

Q. Where did this water go to?

A. It seemed to go in the brush.

(Testimony of George P. Torkleson.)

Q. How did you happen to see that a couple of days before the slide?

A. Well, I had been eating heavy food and was nervous like, and I usually lots of times take a walk up through the hills some place for exercise—I wasn't doing much during those days.

Q. Where was that where you saw this water coming out of this penstock?

A. Why, right at Gastineau Avenue, just about in front of it.

Q. Gastineau Avenue, in front of the place, and that was about two days before the slide happened?

A. Two days before the slide.

Q. You cannot tell how much water was coming out of there at that time? A. No, I didn't notice.

Q. Have you any idea as to the size?

A. I am a poor judge of water flowing—I was at a distance—I wasn't up to see what it was.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. I wish you would explain to me how that stream looked, as it came out; how wide was it?

A. I never noticed the width of it.

Q. Can you give me some idea of how wide it was? [278]

A. I couldn't very well, because I see the water come there—I don't know how much there was dropping out of there—I could not say.

Q. You couldn't say that?



(Testimony of George P. Torkleson.)

A. No, I couldn't say that.

Q. Where did it come from, the top of the flume, the bottom of the flume, or where was it?

A. From the top of the flume—flowing over.

Q. It was flowing over the top of the flume?

A. Yes.

Q. And the stream was running down and hitting the ground and going into the brush?

A. Yes, come shooting right over and hit right in the brush.

Q. About how far down did it shoot, Mr. Torkleson?     A. I couldn't tell you that.

Q. I mean about how far—do you know about how many feet—about?

A. From the drop of the water to the ground, you mean?

Q. Where it dropped from the flume to the ground.

A. I would judge about 10 or 15 feet, maybe, what it looked to me—the height of the thing, as far as I noticed.

Q. You didn't notice it particularly?     A. No.

Q. You couldn't tell how wide the stream was?

A. No.

Q. Whether it was a big stream or a small stream?

A. No; it was a pretty good-sized stream.

Q. How much water you don't know?

A. No, not just how much water there was in it—it is more than the ordinary rain around the hills up there—I noticed that.

Q. That was two days before the slide?

(Testimony of George P. Torkleson.)

A. That was two days before the slide.

Q. It was raining then, wasn't it—raining pretty hard?

A. Misting. [279]

Q. And it was pretty warm, wasn't it?

A. It was misting.

Q. And it was pretty warm, wasn't it?

A. I didn't notice it was pretty warm—it was raw and damp—it didn't feel very warm to me.

Q. How many streams did you see—only one?

A. Only one stream.

Q. And it was shooting out towards Gastineau Avenue?

A. Yes; and it seemed to be in the direction of the rest of the flume, running into the box there and shooting over.

Q. It came right over the top of the flume and on to the ground, that is all you know about it?

A. That is all I know about it, yes, sir.

Q. You don't mean to say that you know the location of those things on the ground yourself—you know them on the picture only?

A. Well, I know them from what I saw on the avenue and from the street afterwards—that is all I know.

Q. And you have had them pointed out to you, where they are on the picture?

A. I see them on the picture as well as I saw them on the avenue.

Q. When did you see this picture before, Mr. Torkleson?

(Testimony of George P. Torkleson.)

A. When he showed it to me just a minute ago.

Q. You have seen it before that, haven't you?

A. I seen it this morning; yes.

Q. You had it pointed out to you where it was on the picture?

A. He asked me just about where it was and I showed him.

Q. You pointed out the place where the flume was?     A. Yes.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. RODEN.)

Q. You pointed it out yourself?

A. You asked me where it was and I pointed it out.

Mr. RODEN.—Yes, if you hadn't you wouldn't be here. That is all. [280]

Q. (By Mr. HELLENTHAL.) Was that the exact point you pointed to now?

A. I might have had my finger on a different spot, but right around it.

Q. ( By Mr. HELLENTHAL.) In that neighborhood?     A. In that neighborhood, yes.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

**Testimony of J. L. Gray, for Plaintiff.**

J. L. GRAY, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

(Testimony of J. L. Gray.)

Direct Examination.

(By Mr. RODEN.)

Q. You may state your name, please.

A. J. L. Gray.

Q. Where do you live, Mr. Gray?      A. Juneau.

Q. How long have you resided in the town of Juneau?      A. 17 years.

Q. What is your business?

A. Manager of the Alaska Soda Bottling Company.

Q. Were you in the town of Juneau on January 2, 1920, Mr. Gray, that is the day of the slide?

A. Yes, sir.

Q. Where were you at the time of the slide?

A. Sitting in my office.

Q. Where is your office located with reference to Goldstein's store?

A. It is just a little below Goldstein's store, on the opposite side of the street.

Q. You can see the Goldstein store from your office?      A. From the front window, yes, sir.

[281]

Q. What attracted your attention to the slide first, Mr. Gray?

A. I think it was when the street crashed through up there, Gastineau Avenue.

Q. What did you do then?

A. I started to run.

Q. Where did you run to?

A. I started to run toward the city dock.

Q. For what purpose?

(Testimony of J. L. Gray.)

A. Get out of the way of the slide.

Q. Did you look up on the sidehill at any time?

A. I was watching this—there was a big two-story house coming down and I was watching this house all the time as I was running.

Q. Did you see any water coming down there at that time?

A. Not at that time I wouldn't say that I did.

Q. When did you see the water come down, Mr. Gray?

A. I saw some water coming down right after the slide had settled. I went through an alleyway there around to the back and I saw some water coming down through under the steps there coming down from the Windsor apartments.

Q. How much water was coming down there?

A. There was quite a little stream coming down.

Q. Do you know where that stream was coming from? A. No, sir.

Q. How high up the hill did you see that stream?

A. I wouldn't say, Mr. Roden—I wouldn't say that I noticed it coming down above where the steps are.

Q. What did you do, if anything, concerning this water?

A. The first thing that I did after this house hit at the bottom, I saw a man down by the water hydrant there by Jim Connor's, and I hollered to him to turn the fire-alarm in, and then we heard some moaning and some screams of people around in the back there, and I went around in the back

(Testimony of J. L. Gray.)

to see what was going on; then some one asked me to call up the Alaska Juneau and asked me to tell them to turn off the water, which I did. [282]

Q. To turn off which water?

A. To turn off the water in the flume, I suppose; and Mr. Blossom told me that they had already turned off the water.

Q. Who was Mr. Blossom?

A. Mr. Blossom at that time was one of the employees of the Alaska Juneau Mining Company.

Q. Did he answer the telephone? A. Yes, sir.

Q. Do you know how long the Goldstein store, that is, not this present building, but I mean how long the Goldstein property there had been occupied, about?

A. Which property do you mean?

Q. The one that Izzy Goldstein is in now.

A. Oh, in his store?

Q. Yes,—I don't mean this particular store building, but I mean the lot—it may not be the same building.

A. I think that building was built in 1905 or '06, I am not sure which.

Q. Was it there when you came here?

A. I wouldn't say that—Mr. Goldstein was living in a house that is torn out, when I came here first.

Q. What I am trying to get at is this, Mr. Gray: was the property in there, the real estate, that portion of the hill there, occupied by people—that is, occupied by buildings, when you came here?



(Testimony of J. L. Gray.)

A. Yes.

Q. That portion of that sidehill there has been settled for the last 17 years to your knowledge?

A. Yes, sir.

Mr. RODEN.—That is all. [283]

Cross-examination.

(By Mr. HELLENTHAL.)

Q. The settlement that was on that sidehill when you came here consisted of a few cabins, didn't it?

A. Yes, sir.

Q. There were no houses up there such as there are now—no big houses?

A. There were not so many houses up there as there are now, but there were cabins up there.

Q. Izzy Goldstein had a store, or his folks did?

A. Yes, sir.

Q. And that was situated where the store is now, or near it? A. Yes, sir—near it.

Q. I wouldn't say just exactly the same, but situated right near it? A. Yes, sir.

Q. Right next door to it, or I think the old building was moved, wasn't it, for the new one?

A. I don't know.

Q. The old store was there first? A. Yes, sir.

Q. And the new building was built afterwards?

A. Yes, sir.

Q. On the hillside there were some small cabins, but no big houses such as there are now?

A. I couldn't say as to that.

Q. The big houses have been built in the last five, six, seven or eight years?

(Testimony of J. L. Gray.)

A. Like the Windsor, yes. The cabins of old man Lund were there.

Q. Yes, they were there when you came?

A. Yes.

Q. And they have put up the larger houses since? A. Yes.

Q. And the larger houses have been built in the last five or [284] six years—something like that?

A. Something like that.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. RODEN.)

Q. And the town wasn't nearly as big when you first came as it is now, was it, Mr. Gray? A. No.

Q. Or as it was three or four or five years ago?

A. It wasn't as large when I came, no.

Q. But all along there it was occupied by stores and the sidehill was occupied by cabins?

A. Yes, sir.

Q. Were there some other stores right in there alongside of Goldstein's store?

A. I wouldn't say as to that, Mr. Roden.

Q. Didn't Decker have a store down there—Decker Brothers?

A. I don't remember whether Decker had a store down there or not.

Q. It may have been before your time?

A. Yes.

Mr. RODEN.—That is all.

(Testimony of J. L. Gray.)

Recross-examination.

(By Mr. HELLENTHAL.)

Q. Decker Brothers had a store up across from the First National Bank?

A. Yes, where Ross and Higgins was.

Q. The old Decker store, that was uptown from Izzy Goldstein's?

A. I don't know any thing about it.

Q. Were you here when those slides occurred in that neighborhood?     A. Former slides?

Q. Yes.

A. The first slide I remember in that neighborhood was the slide [285] down opposite the saw-mill about six or seven years ago, I believe it was.

Q. You don't remember the slides in the neighborhood of Goldstein's store?

A. No, sir; I think that was before my time.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

### **Testimony of Hans Berg, for Plaintiff.**

HANS BERG, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

Q. Mr. Berg, what is your business?

A. Carpenter.

Q. Where do you live?     A. Juneau.

Q. How long have you lived in Juneau?

A. About 8 years.

(Testimony of Hans Berg.)

Q. And have you followed the carpentry business pretty well during that time? A. All of the time.

Q. Are you acquainted with the flume and penstock of the Alaska Juneau Gold Mining Company located on the hillside above the town of Juneau?

A. Yes; I built the penstock, or helped to build the penstock.

Q. You built that penstock? A. Yes.

Q. Can you give us any idea as to the time when you built it? A. It was in the fall of 1916.

Q. I wish you would give us a rough description of the dimensions of the penstock—how it was built.

A. Just the exact dimensions I couldn't give because it is so long ago I don't remember the measurements of it, but it is [286] about 12 by 12—that is the square area, and it is 12 or 14 feet deep—it was considerably deeper than it was wide, I think.

Q. You think it was about 12 to 14 feet deep?

A. Yes.

Q. And about 12 by 12 otherwise?

A. Yes, that is about it—I couldn't say exactly.

Q. Are you acquainted with what has been called here the trommel screen that was in the penstock?

A. Yes; I installed that screen.

Q. Where is that located with reference to this penstock building?

A. Well, it is up on the top—in the top part of the penstock.

Q. It is in the upper part of the penstock?

A. Yes, in the upper part of the penstock, located

(Testimony of Hans Berg.)

right over the penstock, so to say.

Q. Does any device lead out of this penstock to carry water to different places?

Q. Yes, there are pipes.

Q. Where are these pipes located with reference to the screen?     A. The trommel screen?

Q. Yes,—do you think you could draw a little sketch on the blackboard here so the jury can understand it, perhaps, a little better?

A. I will try. The flume went about here, and here is the penstock. This here, you see, is downhill—the pipe that went to the mill—I believe was a 30-inch pipe—come out about here—this place here is supposed to be square with the hillside, as the pipe is laid; then comes a smaller line, a little lower—it is a high pressure pipe for a water system for the city; and then here—I am not positive—I think the boiler feed pipe, that is a drain-pipe, coming there, just on the bottom. That is as close as I remember—it might be here or it might be there, I am not positive of that. That flume laid in there—the flume might come a little down there—I don't remember—it is four or five years ago and I cannot remmeber so close. [287]

Q. Try to locate in there this screen you have spoken about.

A. The screen comes in here. The screen goes down there—it was circular, to direct the water into the trommel—it was screwed on there.

Q. Where is the tunnel?

A. The tunnel comes over and extends out this

(Testimony of Hans Berg.)

way. This is just on the end.

Q. The trommel would be running this way?

A. Yes.

Q. And revolving? A. Yes.

Q. The water would come through and fall down in here? A. Yes.

Q. And flow into these different pipes then?

A. Yes.

Q. Were there any spillways connected with this penstock, Mr. Berg?

A. Not at that time. The screen was installed in 1918.

Q. Was there any spillway provided up to that time?

A. I don't know about that time. We only provided for a little tin chute that should take rubbish and whatever might be in the water so that it wouldn't block up the pipes.

Q. You know where the portal of the tunnel is up there? A. Yes.

Q. Is there any spillway between that tunnel and the penstock?

A. There wasn't any at that time except to clean out mud, gravel and dirt in the bottom of the tank there close to the portal.

Q. That was a clean-out tank,—that wasn't to take care of any water?

A. No, it wasn't at that time.

Q. It was a clean-out tank or gravel tank, and was just to take care of the rocks and material that might come through? A. Yes.



(Testimony of Hans Berg.)

Q. And sand. Now, suppose that screen would get blocked up in any way, for any reason, where would the water that was coming through the flume go to? [288]

A. Well, likely it would go towards the tin chute.

Q. Which tin chute? A. That one at the end.

Q. Why would it go through that tin chute?

A. Because the screen was slightly slanted—it was narrower at the receiving end than it was at the other—that is providing for the rubbish to go out.

Q. There would have been no other place for the rubbish to go out of that penstock except through that chute? A. And overflow at the portal.

Q. Yes, and overflow at the portal, but say the service pipes became clogged up or the screen became clogged up, the pipes wouldn't carry off the water, and if the screen is blocked up of course the water would never get to the pipe, would it?

A. No,—of course more or less would go through the pipe—it wouldn't be entirely clogged up, I don't suppose.

Q. Some might go through, but where would the water go to in that event?

A. The lowest point would be where that rubbish chute was—that was the lowest point in the tank.

Q. That is the lowest point in the tank and that is where the water would come out of it?

A. Yes.

Mr. RODEN.—You may cross-examine.

(Testimony of Hans Berg.)

Cross-examination.

(By Mr. HELLENTHAL.)

Q. There was a rubbish chute put right below the trommel screen to carry out the rubbish that the trommel screen took out of the water, Mr. Berg?

A. Yes.

Q. That is right, isn't it?      A. Yes.

Q. And that screen would never get so clogged up that all of the [289] water would run over it—that would be impossible, wouldn't it?

A. No, I wouldn't say that—there would always some water go through it.

Q. If the screen would be clogged up some water would run out of the chute, that is right, isn't it?

A. Yes.

Q. You know there was a tank at the mill?

A. Yes.

Q. And that takes care of the overflow?

A. Yes.

Mr. HELLENTHAL.—That is all.

Redirect Examination.

(By Mr. RODEN.)

Q. You know the pipe-line that went from the penstock to the mill?      A. Yes.

Q. Do you know whether there is any gate of any kind in that pipe-line?

A. There is some kind of valves provided for the city fire system—that is all I know of.

Q. I mean a valve in the big pipe-line?

A. Well, there is a valve at the so-called adminis-

(Testimony of Hans Berg.)

tration foundation—I don't know what really that is for—I think there is a big valve there.

Mr. RODEN.—That is all.

Recross-examination.

(By Mr. HELLENTHAL.)

Q. That valve has a padlock on it, hasn't it, Mr. Berg?

A. Yes, it was locked.

Q. That valve that you were speaking of is on the city pipe?

A. No, I am not positive—I think it is in the big pipe.

Q. The valve in the big pipe has a padlock on it, hasn't it?

A. I know there is a valve on it—I never had no occasion to look into that—I know there is a valve there. [290]

Q. That pipe is always kept open and the water runs into the mill tank?

A. Yes, I presume it is.

Q. And that big pipe that runs to the mill tank—that is never shut and that water runs down to the mill tank, and that is where the overflow is, isn't it?

A. There is an overflow there, yes.

Mr. HELLENTHAL.—That is all.

Q. (By Mr. RODEN.) Do you know whether or not there is a big valve in that big pipe anywhere?

A. There is a valve there—I am not positive whether it is the big pipe-line.

Q. (By Mr. RODEN.) If there is a valve and if

(Testimony of Sim Frieman.)

the valve is closed the water is not always running through the pipe-line, is it?     A. No.

Mr. RODEN.—That is all.

(Witness excused.)

**Testimony of Sim Frieman, for Plaintiff.**

SIM FRIEMAN, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. State your name, Mr. Frieman.

A. Sim Frieman.

Q. Where do you reside?     A. Juneau.

Q. How long have you resided in the town of Juneau, Mr. Frieman?     A. 21 years, off and on.

Q. On the 2d day of January, 1920, the day on which the slide occurred, were you in the town of Juneau?     A. Yes, sir. [291]

Q. Did you go down to the slide, Mr. Frieman?

A. I did.

Q. About where were you when you first heard about it?

A. I was working at C. W. Young Company.

Q. How was your attention attracted to the slide?

A. Well, at that time we had an alarm system in there connected with the regular fire-alarm system, and when I heard the alarm I got the number and run down that way.

Q. What position did you occupy with reference

(Testimony of Sim Frieman.)

to the fire department in the town of Juneau?

A. Chief of the fire department.

Q. And the alarm was practically turned right into your office, and what did you do then, Mr. Frieman?

A. Run down there to see where the fire was, and saw the slide.

Q. You ran down there just as fast as your legs could carry you, I suppose?

A. Yes, I think I did.

Q. As a fireman and chief—and what did you do there, Mr. Frieman?     A. I saw the slide.

Q. Had the slide finished—was it over or was the mass still moving?

A. I couldn't say whether the slide was over or not—I couldn't say that one way or the other. All I remember is that we got there and we started right in working helping to get the people out.

Q. The time you got down there did you see any water anywhere over on the slide area?

A. The water was everywhere—that is, water and mud.

Q. Was there any water on the slide area, where the dirt had moved out?

A. Well, I don't know that I noticed the water coming from there.

Q. Do you know where this water was coming from that was coming over this slide area?

A. I saw it coming down the gully.

Q. That is the little gully this side of the slide, which would [292] be the north?

(Testimony of Sim Frieman.)

A. It is the main gully there, wherever the slide came down.

Q. You mean the gully that was caused by the slide? A. I suppose that is it.

Q. That is the gully; you mean that water was coming through that gully that had been caused by the slide, and where this water was coming from you cannot now tell? A. No.

Q. How long did this water continue to run, Mr. Frieman?

A. Well, my attention was brought to it after we had been working there. I don't know how long we had been working, but somebody come to me and says, "Why don't you telephone to the Alaska Juneau to shut off the water?" I went over—I think I went to Winter and Pond's, and phoned to the Alaska Juneau—who I phoned to I don't know—phoned down to the main office and asked them to shut the water off.

Q. Have you any idea how long it took for the water to quit then?

A. No, I don't remember, because I went right back to work then.

Q. Your attention was drawn to other matters?

A. To help try to get the people out.

Mr. RODEN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. When you first came there, Mr. Frieman, you saw no water running over the top of the slide where it had broken loose?



(Testimony of Sim Frieman.)

A. No, because I never even looked.

Q. And it was a matter of probably 10 or 15 minutes after that when you saw water coming from that direction?

A. I couldn't say how long it was—I know I had been working there a while, but how long I couldn't say.

Q. And it was some time after you had been working that you telephoned?     A. Yes.

Q. You don't know how long? [293]

A. No, I couldn't say—during the excitement I don't know how long I was working.

Q. You were excited and you were busy?

A. I wasn't excited—I was paying attention—

Q. You were busy, anyway—you had something to occupy your mind and the time as to a matter of minutes or hours you didn't pay any attention to?

A. No, I couldn't say one way or the other.

Q. Do you remember, Mr. Frieman, the slides that came down there in previous years in that neighborhood?     A. Yes, I believe I have.

Q. What slides did you see there in previous years?

A. I cannot remember the dates of them but I remember there were slides there before.

Q. Right in that same neighborhood?

A. In the same neighborhood.

Q. Do you remember a slide occurring where Mr. Goldstein's building is there?

Mr. RODEN.—We object to that question as not cross-examination.

(Testimony of J. J. Connors.)

The COURT.—Objection sustained.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

**Testimony of J. J. Connors, for Plaintiff.**

J. J. CONNORS, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. Your name is J. J. Connors?     A. Yes, sir.

Q. Where do you live, Mr. Connors?

A. In Juneau, on Gold Street.

Q. You have a place of business on Front Street?

[294]     A. Yes, sir.

Q. About where is that located with reference to the Goldstein store?

A. About a hundred yards below Goldstein's store.

Q. And on the opposite side of the street?

A. On the opposite side of the street.

Q. Were you down in your place of business, Mr. Connors, on the day of the slide, at the time the slide happened?

A. I was in my place of business, yes, sir.

Q. How was your attention called to the slide?

A. I was sitting in my office in my place there of business and I heard a noise—don't know—kind of a crashing noise—I didn't quite understand what

(Testimony of J. J. Connors.)

it was, and I got up and went into the garage part of the place, and a fellow hollered out and said, "Look at the slide."

Q. Who was it?

A. I don't know who it was that hollered—he was running along, hastening down towards where the slide was, and I looked and I saw the back part of Izzy Goldstein's place crashing in, you know—the lumber kind of turning around, and I went down—walked down—I didn't run—I saw everybody running there in kind of a hurry, and I saw everything going, and I went down to where the slide was, and about that time the buildings were crashing in.

Q. Did you see any water up there anywhere?

A. Yes; the water and mud was coming out on the street then when I got there.

Q. Where was this water and mud coming from?

A. Coming down the hill; when I got there I went up the stairs because I heard a lady hollering up there, and there was quite a few men there, and we rushed up the stairs to try to save her, and when I got up there there was a woman, she was down in the mud and water, and she was getting herself out—that was at the first flight of stairs—the long flight pretty near opposite the Windsor Apartments; and there was a boy, looked like a [295] young man, also there, and there was two fellows got hold of him and took him out of this mud, and I went over to help those fellows and this lady was getting out of the mud too.

(Testimony of J. J. Connors.)

Q. You cannot tell where this water was coming from?

A. It was coming right down the hill above Goldstein's, coming right straight down the hill there. While we were there somebody hollered from the street and told us to look out, there was another slide coming down, and I looked up and I saw a lot of rocks and mud and stuff coming from as far up as where the ground was broken on the side of the hill, and we all ran down on to the street, so I went over and told the mayor, Dolly Gray was mayor—I told him he had better go—we could see the water coming over the flume, so I told him he had better go and tell the Alaska Juneau to shut off the water.

Q. This water that was coming from the flume, was that the water that was coming over the slide area?

A. There was no other way for it to come except on down the hill.

Q. Who was working for you in your shop that morning?

A. Billy Neiderhauser and George Jorgenson were the two men that were working in there.

Q. Did George Jorgenson go down there with you?

A. No, not until I went down to the shop—I went down to the shop and told the boys, in fact.

Q. And then he went down?

A. Yes, he went down and tried to help take out some of these fellows.

(Testimony of J. J. Connors.)

Q. So he went down after you had been down to the slide?     A. Yes, sir.

Mr. RODEN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. The first time you observed the water coming from clear off the top was the time that somebody hollered, "Look out for another slide"? [296]

A. The water was coming all the time—the water was coming when this woman was in there—she was in the water and mud at the time.

Q. I know there was water in the back part of Goldstein's store.

A. Water coming down the hill.

Q. But the first time you saw it coming down there was when you heard some one holler—coming from way up at the top where the thing had broken loose?

A. The water was coming all the time down the hill—all the way down the hill.

Q. I know, but that is the first time you saw it up on top?

A. I saw it when I started to go upstairs.

Q. That is coming down over the top of the—

A. Coming down over the ground where the slide started from.

Q. You saw quite a stream of water, didn't you, Mr. Connors, coming over the top there, later on when you looked up there, when you saw it coming from the Alaska Juneau flume?

(Testimony of J. J. Connors.)

A. It wasn't any more of a stream that at any other time, Mr. Hellenthal.

Q. Now listen—when you looked up there and saw it coming from the Alaska Juneau flume, there was a pretty big stream coming over the apex of the slide, wasn't there?

A. Looking from my place, looking at the flume, you couldn't tell how much water was coming over the flume, but you could see water coming over the flume.

Q. I am talking now about the top place where the slide had broken loose.     A. Yes.

Q. There was quite a stream of water coming over there afterwards?

A. I didn't notice any more water coming afterwards than I did any other time I looked up there.

Q. When this picture was taken the stream you saw coming over the top of the slide—I am directing your attention to the upper part where the slide broke loose—referring to [297] Exhibit "O," when the picture, Exhibit "O," was taken the stream that you refer to as coming over the apex or top of the slide where it had broken loose wasn't running?

A. It was coming all the way from here on down, and where the ground was broken it was coming on down here.

Q. That stream isn't on that picture, is it?

A. The stream—what do you mean?



(Testimony of J. J. Connors.)

Q. That is coming over the top or apex is not on that picture, is it?

A. There is no water shows here like it was there because you can't tell whether it is water or what it is—it wasn't much of a stream—it was mud and water.

Q. But afterwards you saw quite a big stream of water running down there, didn't you?

A. I didn't see any more than I did the first time.

Q. That picture doesn't show the water—the water wasn't running when that picture was taken, that you are now testifying about?

A. I don't know anything about this picture.

Q. You can look at the picture, can't you?

A. Yes.

Q. Well, look at it.

A. I can't tell whether this is water or mud. When mud and water are running together you cannot tell what it is in a picture.

Q. Don't you know there is mud oozing out of there in that picture?

A. You can make a cut in the ground anywhere and it will look like mud in a picture.

Q. Don't you see mud oozing out of that bank?

A. No; I cannot tell it from any other broken ground on the side of the hill.

Q. And so the first time, Mr. Connor, you looked up at the top where the slide had broken loose you saw quite a stream of water?

A. When I first went down to the slide.

Q. That was the first thing you did? [298]

(Testimony of J. J. Connors.)

A. To see where this was coming from.

Q. That was the first thing you did?

A. Certainly.

Q. How much water did you see running there at that time, Mr. Connor?

A. I couldn't measure the flow, but there was water all over that part of the ground that was broken, and it was coming down in all directions; and the space from the stairs that I went up to cross to where this woman was in the mud, I would judge it would be 40 or 50 feet.

Q. And that was all covered with water?

A. That was all covered with water and mud and rocks and pieces of lumber and everything that would make a wreckage.

Q. And that is the water that you noticed when you looked up?

A. That was the water that was coming down the hill.

Q. That was the water you saw when you first went up there?      A. Certainly.

Q. At that time you didn't see where the water came from, did you?

A. No, I didn't see where it came from until I came out and I looked up the hill and I saw the water coming over the flume.

Q. Then you saw it coming over the top where the slide had broken loose?

A. It was coming right down the road of the slide, yes.

(Testimony of J. J. Connors.)

Q. And there was a big stream of water there at that time, wasn't there?

A. How it got from the flume to the slide, I couldn't tell, because I wasn't up there, and I couldn't see from where I was the track of the water.

Q. All you could see, there was water on top, and there was some kind of a stream coming over where it broke loose?

A. Yes; you couldn't judge, Mr. Hellenthal, how much water was there.

Q. I know, but I am asking you if there was water on top, and some kind of a stream coming over where it broke loose? [299]

A. There was quite a lot of water and mud coming down all the way along.

Q. Of course between the flume and the slide you couldn't see where the water was running?

A. No, nobody could from down there.

Q. Now, that was really the first time, Mr. Connors, that you saw where the water was coming from, and that was in the neighborhood of where you were, down on the steps?

A. Yes, I looked up because for that water to be coming down there, a person would naturally look upwards.

Q. Before that time you didn't know anything about water, and you were not looking for water, isn't that the idea?

A. It wasn't any of my affairs—I wasn't thinking anything about it at all. I wanted to see what

(Testimony of J. J. Connors.)

the cause of the trouble was and see if I could do any good.

Q. You went down to help take the people out of the wreckage? A. Yes.

Q. And you went to work?

A. I didn't do much. Mr. Frieman came down and took charge of things. I said, "If I can be of any help, I will be glad to help," but I thought it was better to put it under some head to handle it.

Q. You were trying to do whatever you could to get the people out? A. Yes.

Q. You heard the woman yelling and you were looking for the yelling and not for the water?

A. Yes; and I was looking out for myself, so I wouldn't get caught in any slide.

Q. Then after you went out in the street, when they talked about a second slide, then you saw the dirt and rubbish and all of that—

A. Yes; it was coming when we went out, dirt and mud and water all coming down.

Q. And that is the time the water was coming down? [300]

A. There was no heavy brush coming down.

Mr. HELLENTHAL.—Oh, that's all.

Redirect Examination.

(By Mr. RODEN.)

Q. How long would you say it took you to get from your shop to the scene of the slide, Mr. Connors?

A. As long as it would take a man to walk 300

(Testimony of J. J. Connors.)

feet, or a hundred yards—somewhere along there—I don't know how long.

Q. Have you any idea as to how long this water continued to run?

A. The water was shut off at 7 minutes to 12 by my watch—that is, it stopped running over the flume.

Mr. RODEN.—That is all.

(Witness excused.) [300½]

**Testimony of E. C. Guerin, for Plaintiff.**

E. C. GUERIN, a witness called on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. Will you please state your full name?

A. E. C. Guerin.

Q. What is your profession, Mr. Guerin?

A. Surveyor of the Land Office.

Q. How long have you been engaged in this profession, Mr. Guerin?

A. Off and on for the last 21 years.

Q. How long have you been with the United States Land Office?

A. Permanently since the spring of 1917.

Q. On the 2d day of January, 1920, were you in the town of Juneau? A. I was.

Q. That is the day on which the slide occurred?

A. Yes, sir.

(Testimony of E. C. Guerin.)

Q. Can you tell us where you were, Mr. Guerin, at the time of the slide?

A. I was on the street somewheres near the Coliseum Theater—somewheres along there. I had been down to the Estebeth—I was going to Sitka that night—and was coming back.

Q. Will you please state about how far it is from the Coliseum Theater to the Goldstein store?

A. I couldn't state exactly.

Q. No, but about?

A. I suppose it is a hundred yards or better—I really don't know—I never measured it—never counted the blocks, even.

Q. It is a couple of blocks or so?

A. I don't know just how far it is.

Q. The only reason I ask you the question, some of the gentlemen are not very well acquainted around the town of Juneau.

A. It is maybe a hundred yards—I couldn't say the exact distance. [301]

Q. You were at the Coliseum Theater?

A. Somewhere near the Coliseum Theater—within a few feet of it.

Q. What attracted your attention to the slide?

A. The noise.

Q. That was the noise caused by the crashing of the buildings, I suppose?

A. No; the first noise was more like a rumble—I really couldn't describe it hardly. When I first saw it the buildings went along kind of like that for a few feet, and then started to roll over and they



(Testimony of E. C. Guerin.)

went out of sight from where I was.

Q. Did you go down to the scene?      A. Yes, sir.

Q. I suppose you moved about as fast as you could?

A. I stepped right along—I don't know how fast I traveled.

Q. Any man, seeing anything like that happen, would naturally want to get there as soon as he could. Did you see any water up there at that time, Mr. Guerin?      A. Yes, sir.

Q. Whereabouts was that water,—whereabouts with reference to where the ground had slipped?

A. It was coming over the apex of the slide.

Q. Can you describe to the Court and jury where this water was coming from.

A. No, I never knew there was a flume up there, even.

Q. You don't know where the water was coming from?

A. I don't know where the water was coming from; no.

Q. You do know it was coming over the apex of the slide?      A. Coming over the hill; yes.

Q. Can you give us an idea as to how much water was coming over the hill, Mr. Guerin?

A. No, I couldn't give the volume—there was quite a little stream, I know that.

Q. Was it a solid stream?

A. Well, it looked like a couple of feet wide; I couldn't state that positively. [302]

(Testimony of E. C. Guerin.)

Q. How long did you stay down there, Mr. Guerin?

A. I ran up the flight of steps in behind some buildings there, and went over into the slide, and then the people on the street—we were taking some boards out of the bottom and trying to help the people that were in the wreckage, and some people yelled another slide was coming and we jumped up on the buildings, into the alleyway and down on to the street—that's all I know about it.

Q. By that time the fire department had arrived?

A. I suppose they had.

Q. Were you one of the first upon the scene?

A. Yes; there were probably three or four men there when I got there—I don't know how many—I didn't count them.

Q. Was there anyone with you at that time, Mr. Guerin?

A. Yes; Sam Simonson was with me—he was going to Sitka with me.

Q. He was under you?      A. Yes.

Q. Is that the Sam Simonson that was testifying here yesterday afternoon?

A. I don't know whether he testified here or not.

Q. Yes, he testified yesterday. Can you give us an idea, Mr. Guerin, about how long this water continued to run, or did you go away from there?

A. I didn't stay there—I don't know how long it did run—quite a little while, though.

Mr. RODEN.—That is all.

(Testimony of E. C. Guerin.)

Cross-examination.

(By Mr. HELLENTHAL.)

Q. You saw that stream of water, Mr. Guerin, some time after you got to the slide?

A. I saw it at the time, as I remember it, Mr. Hellenthal.

Q. And your recollection now is that it was pretty soon after you got there that you saw it?

A. As I went up the hill I noticed it, and it continued maybe an hour, coming down all the time.  
[303]

Q. The stream as it came over the bank was quite a stream of clear water?

A. Yes, I guess it was a couple of feet wide. I paid very little attention to it. I went in there to give some help if I could.

Q. That was the principal thing you were after?

A. Yes.

Q. To do something, and you were not particularly looking for water?

A. No; I wasn't looking for trouble, in other words.

Q. And you are now testifying as to the way it looks to you now of what happened at that time?

A. Yes, sir.

Mr. HELLENTHAL.—That is all.

Q. (By Mr. RODEN.) You are testifying the way it looked at that time?

A. The way I remember the situation at that time.

Q. (By Mr. HELLENTHAL.) The water was coming in one stream, wasn't it?

(Testimony of E. C Guerin.)

A. Well, I should say over the top it was that wide, I guess; I couldn't say exactly how wide.

Q. (By Mr. HELLENTHAL.) You couldn't say how wide it was, but it was in one stream, I say?

A. As I remember it, yes, where it came over the top there.

Q. (By Mr. HELLENTHAL.) And you saw no other streams?

A. I really wasn't paying any attention—I just saw the water coming over the apex of the slide.

Q. (By Mr. HELLENTHAL.) At the apex it was all coming in one stream—there were not a number of streams, but just one solid stream?

A. One stream is all I noticed.

Mr. HELLENTHAL.—That is all.

(Witness excused.)

(Whereupon court adjourned until 2 o'clock P. M.) [304]

## AFTERNOON SESSION.

March 25, 1921, 2 P. M.

### **Testimony of W. J. Manahan, for Plaintiff.**

W. J. MANAHAN, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

#### Direct Examination.

(By Mr. RODEN.)

Q. State your name, please.

A. Walter J. Manahan.

Q. What is your business?

(Testimony of W. J. Manahan.)

A. Transportation clerk.

Q. How long have you been in the town of Juneau?     A. About 5 years.

Q. On the 2d day of January, 1920, that is the day on which this slide occurred, where were you, in the morning?

A. In the Pacific Steamship Company's office.

Q. Were you in the office of the Pacific Steamship Company at the time of the slide?     A. Yes.

Q. What, if anything, drew your attention to the occurrence, Mr. Manahan?

A. The crashing of timbers.

Q. What did you do then?

A. I didn't do anything for a minute—I was quite surprised, but when I kind of composed myself a bit I looked out of the window from my desk.

Q. And you looked over in the direction of where the slide had occurred?     A. Yes, sir.

Q. Did you see anything there in the way of water, Mr. Manahan?

A. I saw water coming down this hillside there—water, mud, gravel, and so forth.

Q. Was it coming down over this area where the slide had happened? [305]

A. This way, on the lower side of where the upper walk or road had been.

Q. That is down below what we call—

Mr. HELLENTHAL.—I object to this leading.

Mr. RODEN.—I was trying to get the name of the place.

Q. What upper walk do you mean, Mr. Manahan?

(Testimony of W. J. Manahan.)

A. Meaning that roadway known as Gastineau Avenue.

Q. That is where you saw the stuff moving down in— A. Below that.

Q. And you saw mud and water and debris and rocks, and so forth? A. Yes, sir.

Q. Did you go down to the scene of the slide yourself, Mr. Manahan?

The COURT.—Counsel objects to your leading.

Mr. RODEN.—I am just asking now if he went down there to the place and looked at it.

The COURT.—Try not to lead.

Q. Did you go down there, Mr. Manahan?

A. I went over there later on—probably 15 or 20 minutes after it had occurred.

Q. Did you see any water coming down there then?

The COURT.—You are continuing to lead him.

Q. What did you see then? Tell us what you saw.

A. I saw a lot of timbers, people running around, possibly some water—I don't exactly remember—I couldn't recall exactly what I saw—possibly like everyone else I was excited and couldn't tell you exactly, but there was considerable rock and mud and so forth sliding around there.

Mr. RODEN.—That is all.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. The water that you saw, Mr. Manahan, was down below the upper walk? A. Yes, sir.



(Testimony of W. J. Manahan.)

Q. At the lower end? [306]      A. Yes, sir.

Q. And you didn't see any water up at the top of the slide—the apex of the slide, at that time?

A. Not at that time because I couldn't see that from inside of the office—I couldn't see the top.

Q. You didn't see that until you got down to the place 15 minutes or so later?

A. Until I got out of the office—I could see it from the platform there.

MR. HELLENTHAL.—That is all.

(Witness excused.) [307]

**Testimony of James Larson, for Plaintiff.**

JAMES LARSON, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Mr. RODEN.)

Q. What is your name?      A. James Larson.

Q. What is your business?      A. Carpenter.

Q. How long have you been around the town of Juneau?      A. About 8 years.

Q. Are you acquainted with the flume and penstock that is maintained by the Alaska Juneau Company in the town of Juneau, on the hillside?

A. Yes, sir.

Q. Did you have anything to do with the installation of that penstock?      A. I was working on that.

Q. Do you remember when that was?

(Testimony of James Larson.)

A. No, I couldn't exactly give you the year and the date.

Q. Were you in the town of Juneau at the time of the slide?     A. Yes, sir.

Q. Where were you?

A. I was working for the Pacific Coast dock, down here, moving the coal-bunkers.

Q. What, if anything, drew your attention to the slide?

A. My partner and I, Jack Graham, we were working, and I heard the fire-bell, and I says to my partner, "There must be a fire some place; I am going up to the hopper and see"; and when I came out there I saw the whole slide had occurred and saw the water and the whole thing coming down.

Q. Where did you see this?

A. Up at the hopper.

Q. That is the coal-hopper?

A. Yes, sir. [308]

Q. Just describe as clearly as you can what you saw when you looked over towards the slide.

A. The first thing I noticed was the slide, then I saw the water coming from the hill over it, and then the next thing, as soon as I saw it, I started running down for the slide.

Q. Where was this water coming from that you saw coming over the top of the slide?

A. From the top of the hill.

Q. Whereabouts with reference to the location of the penstock?

A. From what I could see it was coming out of

(Testimony of James Larson.)

the end of the penstock and going over the hill.

Q. And then after you saw that you say you went down to the place yourself? A. Yes, sir.

Q. Did you see any water coming down there then? A. Yes, sir.

Q. Where was that water coming from?

A. From the top of the hill.

Q. Was that coming from the same place the water came from before? A. Yes, sir.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. The first you saw of it, you were working down below where you couldn't see it when you heard the fire-bell; is that right? A. Yes, sir.

Q. And after you heard the fire-bell you went up to see what had happened?

A. I went up to the hopper.

Q. And from there you could look over?

A. Yes, sir.

Q. Is that the same place Mr. Sutton was working? A. No, sir.

Q. He wasn't right at that place. Now, when you got up on top [309] of the hopper,—

A. I beg your pardon—Mr. Sutton was working on the next dock from there.

Q. He was working near there but not at the same place? A. Not at the same place.

Q. When you looked over there you saw water coming from the penstock, I believe you said?

(Testimony of James Larson.)

A. Yes, sir.

Q. The water you saw coming from the penstock dropped on the ground and ran down the hill, but at the time you didn't notice where that water finally ran out, when you were in the hopper—you couldn't see that from there?

A. I could see it coming over the high place on the hill and going right over the slide there.

Q. You could see where it came from the top down, but you couldn't trace that water down to the foot of the slide, could you—when you were in the hopper, I mean?

A. Yes, sir.

Q. What could you see there?

A. I could see the water coming over and following where the slide had gone.

Q. Now, when you got to the slide did it look any different than it did when you were down in the hopper?

A. No, sir.

Q. When you got to the slide that was maybe 10 minutes later, wasn't it?

A. No, sir.

Q. How much later?

A. It couldn't be over three minutes.

Q. Do you mean to tell me that you can hear a fire-bell, climb up in that hopper and get down to the slide in three minutes?

A. No, I don't mean that. The minute I am down there I started running across the Pacific Coast dock and run over there, and it wouldn't take any human being over 3 minutes. [310]

Q. How long were you on top of the hopper?

(Testimony of James Larson.)

A. Just one second—took one glance and went down.

Q. All that you have testified to of what you saw from the hopper you saw in just a glance, is that right—just a glance?

A. Only just a quick glance at that time, and then run.

Q. Just a quick glance, then you jumped and ran for the slide; is that right?

A. Yes, sir, that is right.

Q. And then you got to the slide, and you have testified to what you saw after you got there?

A. Yes.

Q. How long did you stay at the slide?

A. I was working the whole day from the time I got over there.

Q. After you got to the slide and had been there a little while, wasn't there a big stream of water coming over the top of the place where the slide had broken loose?

A. Yes, right on top of the place where the,—

Q. How big a stream was that?

A. I couldn't say—it was quite a big stream.

Q. Quite a big stream of clear water running over there like a little waterfall?      A. Yes.

Q. That was the situation, wasn't it?      A. Yes.

Q. That was a little while after you got there?

A. Yes, sir.

Q. That stream wasn't there when you first got there, was it, or did you notice?      A. Yes, sir.

(Testimony of James Larson.)

Q. That stream was there when you first got there?

A. That stream was there when I first got there, yes, sir.

Q. If this picture was taken on the morning of the slide,—look at that little building where the slide was, that must have been taken then, you think, before you got there, wasn't it? [311]

A. No, that don't look like it at that time because when I was looking there was a big stream coming down over there.

Q. That big stream doesn't show on that picture, does it? A. No.

Q. That must have been taken, then, before you got there, if it was taken at that time at all?

A. If it was taken at that time,—that is what I don't know, when it was taken.

Q. Because the stream you saw was quite a big stream and was running right over that hill?

A. Yes.

Q. And it was a stream a couple of feet wide, wasn't it? A. Yes.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [312]

### **Testimony of Harry Douglass, for Plaintiff.**

HARRY DOUGLASS, sworn as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:



(Testimony of Harry Douglass.)

Direct Examination.

(By Mr. RODEN.)

Q. What is your name?      A. Harry Douglass.

Q. What is your business?

A. Fishing and mining.

Q. Were you in the town of Juneau on the 2d day of January, 1920, at the time of the slide?

A. Yes, sir.

Q. What were you doing on that day?

A. Well, I wasn't doing much of anything, but I happened to be down to the P. C. dock at the time.

Q. You were on the P. C. dock at the time of the slide?      A. Yes, sir, I was.

Q. Did you look in the direction of the slide?

A. I did.

Q. What did you see there?

A. A man called my attention to it first, and he said, "Look at the water coming from the hill."

Q. Where was this water coming down the hill.

A. It was coming out a little bunch of timber right opposite the flume—through a clump of trees.

Q. When was that with reference to the slide that you saw that water?

A. Shortly before the slide started.

Q. Did you go down to the place where the slide happened?

A. Yes; just as soon as the first house started to move, that is the time I went to the slide.

Q. Did you see that water when you got down there?      A. Yes, sir.

Mr. RODEN.—You may cross-examine. [313]

(Testimony of Harry Douglass.)

Cross-examination.

(By Mr. HELLENTHAL.)

Q. A little while before the slide you say you saw some water up on the hill running out through a clump of timbers? A. Yes, sir.

Q. That is pretty near up to the Alaska-Juneau flume?

A. That is about halfway up to the Alaska-Juneau flume.

Q. That was the first thing you saw, and then you saw the buildings move? A. Yes.

Q. That was just before you saw that water?

A. About 5 or 10 minutes, I would say.

Q. Then the buildings were moving and you went to the slide? A. Yes, sir.

Q. And it was probably 5 or 10 minutes before you got there?

A. No, sir; I was there inside of two minutes—I was there before the fire-truck got there.

Q. At that time where did you see the water?

A. I saw the water as it come down over the slide—the water was running all the way down the hill over the slide.

Q. The water was running down the hill and was running across the street? A. Yes, sir.

Q. That was a muddy mass there?

A. Yes, a muddy mass, and quite a stream of water.

Q. You didn't see where that water came from?

A. It came down the hill.

Q. You couldn't see the penstock from there,

(Testimony of Harry Douglass.)

could you?     A. From the dock, yes, sir.

Q. I am not talking about the dock—at the time you were at the slide.

A. I didn't pay any attention to the penstock, but I saw the water was coming down the hill.

Q. You didn't pay any attention to where the water was coming from? [314]

A. I didn't pay any attention to where it came from—it came from the flume, that is where it came from.

Q. You saw that before the slide, didn't you?

A. Yes.

Q. But after the slide and the wreckage you didn't pay any more attention to that?     A. No.

Q. And the water you saw then was the water you saw back of Issy's store?

A. No; I saw it above that.

Q. Where did you see it?

A. Up where the street runs to the Dawes' hospital.

Q. That is Gastineau Avenue?     A. Yes.

Mr. HELLENTHAL.—That is all.

(Witness excused.) [315]

**Testimony of Frank Sonberg, for Plaintiff.**

FRANK SONBERG, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

(Testimony of Frank Sonberg.)

Direct Examination.

(By Mr. RODEN.)

Q. What is your name? A. Frank Sonberg.

Q. What is your business? A. Laborer.

Q. Were you in the town of Juneau at the time of the slide? A. Yes.

Q. Where were you— where did you live at that time? A. In the Koski's house.

Q. Do you remember about what time in the morning it was that this slide occurred?

A. Some time about 11—between 11 and 12 o'clock.

Q. After 11 o'clock. Now, where were you just prior to the happening of the slide?

A. I was in the front room, I and another fellow, Andrew Waleen, and Pete Koski was coming in there and he said—

Mr. HELLENTHAL.—Don't say what Peter Koski said.

Q. (By Mr. RODEN.) We don't care what anybody said, Mr. Sonberg. You three men were in the front room, I understood you to say, you and Peter Koski and Andrew Waleen. What has become of Peter Koski?

Mr. HELLENTHAL.—It is immaterial what has become of Peter Koski.

Q. Is Peter Koski dead? A. Yes.

Q. Is Andrew Waleen dead? A. Yes.

Q. Go ahead and tell us what you did, Mr. Sonberg—not what anybody said.

A. Pete was coming in there and he said—

(Testimony of Frank Sonberg.)

Q. Don't tell what anybody said—tell what you did. [316]

A. We went behind the house looking for the water.

Q. When you went behind the house what did you see there?

A. We saw the water was coming under the sidewalk and under the house.

Q. Where was this water coming from?

A. Coming down the hill.

Q. Did you look up the hill to see how far up you could see this water?

A. It is all grass in there, and we never saw, in my estimation, 15 or 20 feet, down to the ground.

Q. Then what did you do?

A. Went down to the basement?

Q. Then?

A. We stayed there about 5 minutes—4 or 5 minutes—then we went up again.

Q. Then what happened?

A. I stepped in the front room, and Andrew Waleen went into the kitchen and he got the door open and he looked up the hill and he saw the slide coming, and he closed the door and he said, "Now," and the slide took the door and knocked him down on the floor, and then the wall came against my face, and the floor what I am standing on, the floor dropped out.

Q. What is the next thing you remember, Mr. Sonberg?    A. I went down with the house.

Q. You went down with the house?    A. Yes.

(Testimony of Frank Sonberg.)

Q. Did you get out of there that morning?

A. Yes.

Q. About how long after the slide did you get out?

A. Oh, I don't really know. We didn't take no attention when the house went down.

Q. You were not damaged any, were you?

A. Not very much.

Q. What material was it that was coming down against the house? [317]

A. When the house started going I didn't see the daylight more than a couple of times, for half a second, and when the house went down there was kind of a hole in the ground and the house was already caved over and I laid there in the hole.

Q. You were lying in the hole? A. Yes.

Q. About how long was it before the slide happened that you went out of there to look at that water? A. Oh, probably 8 or 10 minutes.

Mr. RODEN.—You may cross-examine.

Mr. HELLENTHAL.—No cross-examination.

(Witness excused.) [318]

### **Testimony of Frank Harris, for Plaintiff.**

FRANK HARRIS, called as a witness on behalf of the plaintiff, being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

#### **Direct Examination.**

(By Mr. RODEN.)

Q. You may state your name.



(Testimony of Frank Harris.)

A. Frank Harris.

Q. Where do you live?

A. Salmon Creek road.

Q. How long have you lived in and about the town of Juneau?     A. About 8 years.

Q. What line of business have you been engaged in during that time?     A. Oh, various lines.

Q. Were you acquainted with the flume and penstock that were constructed by the Alaska Juneau Gold Mining Company up on the sidehill in the town of Juneau?     A. To some extent I am; yes.

Q. Have you ever had occasion to go past this penstock and flume?     A. Yes—several.

Q. When was that?

A. You mean traveling up and down past the—

Q. Yes, past the flume and penstock.

A. Why, for about three winters in succession.

Q. Are you acquainted with the trommel screen, as it has been called, that was installed up there?

A. Well, to some extent.

Q. You are somewhat familiar with it?

A. Yes.

Q. Have you at any time seen that trommel screen stop?     A. I have.

Q. When was that, about—that is, let me put it this way—had you seen it stop within 6 or 7 months prior to the time of the slide? [319]     A. Oh, yes.

Q. During that time how often would you say you have seen it stop?     A. Why, I have seen it twice.

Q. Do you know what was the cause of its stopping?     A. Yes, sir.

(Testimony of Frank Harris.)

Q. When you say it stopped was the motor running? A. The motor was running.

Q. And how is the motor hooked up to the trommel? A. By a belt.

Q. When you saw it stop, was the belt from the motor going over to the trommel on the pulley?

A. It was off.

Q. The motor was running?

A. The motor was running.

Q. You were up there on the day of the slide, Mr. Harris, up on the sidehill? A. Yes.

Q. Where were you at the time of the slide?

A. In the blacksmith-shop.

Q. That is right in the mine? A. Yes.

Q. When did you come out of the mine in the afternoon?

A. We came out to take a look at the slide about 3 o'clock.

Q. When you say we came out, do you remember who was with you? A. I do.

Q. What did you do in the way of looking at the slide—where did you go to?

A. Why, I stood right under the snowsheds on the hill there, that we might get a view of what had happened.

Q. Were you familiar with the trail that came down the hill—I mean this trail here—are you familiar with that trail?

A. Yes—this one coming down this way?

Q. Yes.

A. I am—and also the one this way. [320]

(Testimony of Frank Harris.)

Q. When you looked down there from the place where you were standing could you see any indications of where water had run?

A. Not from under the snowshed.

Q. Were you where you could see it?

A. From the penstock.

Q. Did you go over to the penstock at any time?

A. I did.

Q. When?

A. Right immediately after we got out there.

Q. What did you see in the way of water action, if anything?

A. Well, do you want me to explain what I seen after I got to the penstock—is that it?

Q. Yes.

A. At the mouth of the trommel there was a place cut in the earth I should judge 18 inches or 20 inches, and perhaps 6 or 8 inches deep—I could trace that about 20 or 30 feet.

Q. In what direction? A. Down the hill.

Q. Then did you follow it any further?

A. I couldn't because it was lost in the brush.

Mr. RODEN.—You may cross-examine.

Cross-examination.

(By Mr. HELLENTHAL.)

Q. Mr. Harris, you went by there for some three years, you say? A. Well, three winters.

Q. Going to and from your work you passed that trommel screen, going back and forth from your work? A. For three winters, yes.

(Testimony of Frank Harris.)

Q. Now, during that time you saw the trommel screen, you say, stop twice? A. Yes.

Q. Was any water spilling over the screen when it was standing still on those occasions of which you spoke when you say it stopped? [321]

A. No.

Q. There was no water coming out?

A. Not that I know of.

Q. The first time you saw it you went inside, didn't you, and saw that the belt was off?

A. The first time I seen the trommel stop, you mean?

Q. Yes. A. Yes.

Q. You saw the motor was running and the belt was off, and you put the belt on, didn't you?

A. You can hear the motor running and I see the part of the trommel that stuck out of the penstock wasn't revolving so naturally there was something wrong.

Q. And you went inside to see what it was?

A. Exactly.

Q. And when you got inside you found that the belt had kicked off, didn't you? A. Yes, sir.

Q. And you put the belt back on?

A. You bet I did.

Q. And that started the thing going all right and you didn't report it to anybody? A. No.

Q. And the second time you saw it stop what was the situation? A. The same thing exactly.

Q. You put the belt on? A. Yes, sir.

Q. And you didn't report that? A. No.

(Testimony of Frank Harris.)

Q. In both cases the water was running through the screen like a stationary screen, wasn't it, and wasn't spilling over?     A. Yes, sir.

Q. That is true, isn't it?     A. Yes, at that time.  
[322]

Q. Now, Mr. Harris, that looks like the trommel screen spout, doesn't it?

A. Why, it might have been at one time, Mr. Hellenthal.

Q. That is the one you are talking about, isn't it?     A. In this picture?

Q. Yes.     A. No, sir.

Q. That isn't the one you are testifying to?

A. Not what you see.

Q. Is that the one that you saw on the day of the slide?

A. This picture don't look like it.

Q. Now, tell me whether that is the same spout you saw on the day of the slide?

A. Why, the trommel I presume is the same one.

Q. Is the spout the same?

A. For the simple reason—

Q. When you shake your head the stenographer doesn't get it—say yes or no. Your answer is that it isn't the same. You can now proceed to tell us what the reason is.     A. My answer was what?

Q. Your answer is that isn't the same spout that you saw on the day of the slide—that is right, isn't it? You shook your head, and I asked you to put it in such a way that the record will get it.

A. I will answer you, Mr. Hellenthal, but I would

(Testimony of Frank Harris.)

like to explain as regard to this picture taken here, from the formation of the ground.

Q. All right.

A. It might have been taken previous, or after, I don't know.

Q. But the spout—is that the spout that you saw on that day?

A. I couldn't swear to that, Mr. Hellenthal.

Q. You don't know one way or the other?

A. Why, no.

Q. And the conditions around the penstock don't look as they did when you saw them, do they?  
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A. I should say not.

Q. Very different?      A. I should say so.

Q. What is the difference?

A. All this debris and stuff piled up around here, I never seen this.

Q. That wasn't there at the time?

A. I should say not.

Q. That little pile of rocks wasn't there at that time?      A. No, sir, not that I know of.

Q. You are sure about that, aren't you?

A. At the time I seen it?

Q. Yes.      A. Why, sure I am.

Q. You are certain that on the 2d day of January when you were there that little pile of rocks wasn't there—is that right?

A. This looks like quite a pile of rocks, Mr. Hellenthal.